TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 327/61

JOSEPH BATES, ASSESSOR OF INTERNAL REVENUE, ETC.,
PLAINTIFF IN ERROR,

vs.

DAVID M. OSBORNE AND JOHN H. OSBORNE, SURVIVORS
OF THEMSELVES AND C. DENNIS, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

FILED [illegible]

SUPREME COURT OF THE UNITED STATES.

No. 373.

JOSEPH GATES, ASSESSOR OF INTERNAL REVENUE, ETC., PLAINTIFF IN ERROR,

vs.

DAVID M. OSBORNE AND JOHN H. OSBORNE, SURVIVORS OF THEMSELVES AND C. DENNIS, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK.

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1 UNITED STATES OF AMERICA, *ss*:

The President of the United States to the judges of the Circuit Court of the United States for the northern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, between David M. Osborne and John H. Osborne, survivors of themselves and C. Dennis, deceased, pl'ff, and Joseph Gates, def't, a manifest error hath happened to the great damage of the said Joseph Gates, as by his complaint appears: We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distictly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in

2 the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, one thousand eight hundred and sixty-seven.

[SEAL.]

AUGUSTUS A. BOYCE,
Clerk of the Circuit Court of the United States for the Northern District of New York.

WM. A. DART,
Att'y for pl'ff in Error.

Endorsed: U. S. Supreme Court. David M. Osborne and John H. Osborne, survivors of themselves and C. Dennis, deceased, vs. Joseph Gates. Writ of error.

Allowed according to the statute, Nov. 20, 1868.
Filed Nov. 21, 1868.

N. K. HALL,
U. S. Dist. Judge for the Northern Dist. of New York.

3 United States of America to David M. Osborne and John H. Osborne:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the northern district of the State of New York, wherein Joseph Gates is plantiff and you are defendants in error, to show cause, if any there

be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness Hon. Salmon P. Chase, Chief Justice of said Supreme Court of the United States, this 20th day of November, in the year of our Lord one thousand eight hundred and sixty-eight.

N. K. HALL,
U. S. Dist. Judge for the Northern District of New York.

WM. A. DART,
Att'y for Pl'ff in Error.

Endorsed: Supreme Court of the United States. Joseph Gates, pl'ff in error, ads. David M. Osborne and John H. Osborne. Copy citation. Wm. A. Dart, att'y for pl'ffs in error. Potsdam.

Personal service of a copy of the within citation is hereby admitted this 21st day of November, A. D. 1868.

Filed Nov. 24, 1868.

D. WRIGHT,
Att'y for Def'ts in Error.

4 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the Circuit Court of the United States for the northern district of New York, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, between David M. Osborne, and John H. Osborne, survivors of themselves and C. Dennis, deceased, pl'ff, and Joseph Gates, def't, a manifest error hath happened, to the great damage of the said Joseph Gates, as by his complaint appears: We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme
5 Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, one thousand eight hundred and sixty-seven.

[SEAL.]

AUGUSTUS A. BOYCE,
Clerk of the Circuit Court of the United States for the Northern District of New York.

A copy.

A. A. BOYCE, *Clerk.*

Endorsed: U. S. Supreme Court. David M. Osborne and John H. Osborne, survivors of themselves, and C. Dennis, deceased, vs. Joseph Gates. Copy. Writ of error.

Allowed according to the statute, Nov. 20, 1868.

N. K. HALL,
U. S. Dist. Judge for North. Dist. of New York.

UNITED STATES OF AMERICA,
Northern District of New York, ss:

James A. Murray, of Buffalo, in said district, being duly sworn, says: That he is the chief clerk in the office of the United States attorney for said district; that on the 23d (twenty-third) day of November, A. D. 1868, at Auburn, in said district, he personally served a writ of error, of which the within is a copy, on David Wright, esq., by personally leaving with him a copy thereof.

JAMES A. MURRAY,

Subscribed and sworn to before me, this 23d day of November, A. D. 1868.
Filed Nov. 24, 1868.

JAS. L. CLARK,
U. S. Comm. Nor. Dist. N. York.

6 Supreme Court of the United States.

DAVID M. OSBORN AND JOHN H. OSBORN, survivors of themselves and C. Dennis, deceased,
v.
JOSEPH GATES, pl'ff in error.

NORTHERN DISTRICT OF NEW YORK, *ss*:

I, Augustus A. Boyce, clerk of the Circuit Court of the United States in and for said district, do hereby certify that the following is a true and correct transcript and return of the record and proceedings in the aforesaid cause, as remaining on file in my said office, kept by me in the city of Utica, in said district.

In testimony whereof I have hereunto affixed my official seal, and have hereunto subscribed my name at the clerk's office in the
7 city of Utica aforesaid, on the 24th day of November, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the 93d.

[SEAL.] AUGUSTUS A. BOYCE, *Clerk.*

To the Supreme Court of the United States.

Facts agreed upon.

DAVID M. OSBORNE AND OTHERS
vs.
JOSEPH GATES.

The plaintiffs for several years past have been manufacturers of reaping and mowing machines at the city of Auburn, and within the 24th collection district of the State of New York.

The machines made by them were known as "The Kirby." They were made and sold by the pl'ffs as licensees under the several patents in accordance with which they were made.

The plaintiffs had the exclusive right to make and sell machines under those patents.

The castings were all made by the pl'ffs themselves, and were made to be, and were, in fact, used exclusively as component parts of the machines made and sold by the pl'ffs. and were not, any of them, suitable for use, nor could any of them have been used or sold for any other purpose, nor as parts of any machine which was made by any other person or manufacturer.

They were all made from pig iron, upon which the duty
9 required to be paid by the internal revenue law had been paid.

All of these castings required to be polished; many of them required to be painted; many to be varnished, and all required to be examined and tested before use, to fit them for use, and to see that they were perfect and fit for use by the pl'ffs, as component parts of "The Kirby" machine.

In selling the machine pl'ffs included, as parts thereof, all the necessary pieces of castings and of wood-work to constitute a complete working machine in the field; but they did not put all of the several parts together, because it was much more convenient to transport them when not put together. They were put together when the purchaser was ready to use the machine in the field.

Previous to the month of March, 1865, the plaintiffs had never been required, nor did they make any return to the assessor or assistant assessor of their district in regard to any castings made by them; nor was any duty or tax before that time levied upon any of such castings, except as they were included in the machines
10 when finished and sold by the plaintiffs. But in the month of March, 1865, the defendant, as the assessor of the 24th district, was directed by the Commissioner of Internal Revenue to require (and he accordingly did require) of the pl'ffs that they should return, in the form and manner required by the internal revenue act, the number of tons of castings of more than ten pounds in weight of each casting which had been made by them during the months of July, August, September, October, November and December, 1864, and the months of January and February, 1865; also the

value of all the castings made by them during the same time of ten pounds or less in weight of each casting; also of all the finished machines sold by them during the same time, in order that the same might be taxed separately; that is to say—

1st. That the castings of ten pounds in weight or less of each casting should be taxed at the rate of five per cent. ad valorem upon the value thereof.

2nd. That the castings of over ten pounds in weight of each casting should be taxed at the rate of $3 per ton; and

3d. That the machines which had been finished and sold
11 during that time should be taxed at five per cent. ad valorem upon the actual value thereof, including the value of all of said castings which had been used as component parts of said finished machines, and without any deduction being made for the taxes already assessed upon such castings; that such communication was also made to the assistant assessor for said district by the defendant, to whom the plaintiffs made the returns herein mentioned, who transmitted them to the defendant.

The plaintiffs objected and protested in writing upon said returns against the assessment, and also against the payment of the amount assessed; but the assistant assessor, under the definite instructions from the Commissioner of Internal Revenue, before mentioned, as transmitted to him by the defendant, insisted upon the return as above specified; whereupon the plaintiffs, to avoid the penalty for refusing to make such returns as required, did make the return in the form required; and thereupon the assessment was made
12 for the time above specified, and in the form and manner above specified.

That assessment was returned to the collector of the district, and the taxes were paid to him under objection and written protest.

The same state of facts apply to every month thereafter, until the act of Congress placed reapers and mowers upon the free list.

This action is brought against the defendant to recover the amount of the excess of tax assessed and collected of the plaintiffs.

Albany, Oct. 15, 1866.

D. WRIGHT,
Pltff's Atty.
WILLIAM A. DART,
U. S. Atty.

Copy written protest.

The return of the small castings and of the mowers and reapers included in this account, and the payment of duties thereon is made under protest, as we deem the same is improperly and illegally exacted of us. We also object to the taxation of the castings, or any of them, as separate articles. We also object to the taxation of the mowers and reapers without deducting from the value thereof
13 the value of the castings, if taxed separately.

Filed as of Oct. 17, 1868.

Month for which the taxes were assessed.	Weight of castings over 10 pounds.	Value of castings 10 pounds and less.	Sales of mowers and reapers.	Rate of tax.	Amounts.	Total.	Date when paid.
1865. March	679 tons	$9,254 20	$3,725 80	$3 per ton	2,037 00		
" "				5 per cent	462 71		
" "				5 "	186 29	2,686 00	April 29, 1865.
" April	96½ tons	1,313 44	132 33	$3 60 per ton	347 40		
" "				6 per cent	78 80		
" "				6 "	7 94	434 14	June 20, 1865.
" May	128 4-5 tons	1,566 91	912 69	$3 60 per ton	463 68		
" "				6 per cent	94 01		
" "				6 "	54 76	612 45	June 30, 1865.
" June	114½ tons	1,262 66	3,188 67	$3 60 per ton	412 20		
" "				6 per cent	75 75		
" "				6 "	191 32	679 32	July 31, 1865.
" August	11½ tons	182 63	85,910 81	$3 60 per ton	41 40		
" "				6 per cent	10 95		
" "				6 "	5,154 65	5,207 00	Sept. 30, 1865.
" September	49⅓ tons	620 20	31,340 85	$3 60 per ton	177 60		
" "				6 per cent	37 21		
" "				6 "	1,880 45	2,095 86	Oct. 31, 1865.
" October	84 1-10 tons	1,000 00		$3 60 per ton	302 76		
" "				6 per cent	60		
" "				6 "	1,629 75	1,992 54	Nov. 30, 1865.
" November	96⅓ tons	1,459 11	75,634 00	$3 60 per ton	346 80		
" "				6 per cent	87 54		
" "				6 "	4,538 04	4,972 38	Dec. 30, 1865.
" December	36 tons	587 96	17,241 00	$3 60 per ton	129 60		
" "				6 per cent	35 27		
" "				6 "	1,034 46	1,199 33	Jan'y 31, 1866.
1866. January	29¾ tons	400 78	13,209 00	$3 60 per ton	107 10		
" "				6 per cent	24 04		
" "				6 "	792 54	923 68	Feb'y 28, 1866.
" February	66 3-5 tons	880 79		$3 60 per ton	239 76		
" "				6 per cent	52 84	292 60	March 31, 1866.

15 " March	128 tons			3 60 per ton.	460 80		
" "		3,342 15		6 per cent.	200 52		
" "			33,645 00	6 "	2,018 70	2,680 02	May 1, 1866.
" April	125 tons			$3 60 per ton.	450		
" "		2,732 04		6 per cent.	163 92	613 92	May 30, 1866.
" May	128⅓ tons			$3 60 per ton.	462		
" "		2,449 00		6 per cent.	146 94	608 94	July 2, 1866.
" July to 13th	123 2-3 tons			$3 60 per ton.	445 20		
" "		2,993 00		6 per cent.	179 58		
" "			4,413 00	6 "	264 78	1,969 56	Aug. 30, 1866.
Additions			30,822 00	6 "	1,849 32	1,849 32	Sept. 29, 1866.

C. C. U. S., N. D. of N. Y.

DAVID M. OSBORNE AND OTHERS
vs.
JOSEPH GATES.

It is stipulated that the above is a correct memorandum of the taxes collected from the pl'ffs.

WM. DORSHEIMER, *U. S. Dist. Att'y.*
D. WRIGHT, *Att'y for Pl'ffs.*

Albany, Oct. 17, 1868.
Filed Oct. 17, 1868.

16 C. C. U. S., N. D. of N. Y.

DAVID M. OSBORNE AND OTHERS
vs.
JOSEPH GATES.

A trial by jury having been waived by the parties, and this cause having been tried by the court, and the decision having been given, and this day filed, now on motion of David Wright, attorney and of counsel for plaintiffs, judgment is ordered for the plaintiffs against the defendant for nine thousand eight hundred and five dollars and twelve cents, with costs, ($9,805 12.)

Filed Oct. 17, 1868.

17 C. C. U. S., N. D. of N. Y.

Pl'ff's' costs.

DAVID M. OSBORNE & JOHN H. OSBORNE, survivors of themselves, and Cyrus C. Dennis, dec'd,
vs.
JOSEPH GATES.

1st.—Att'ys' fees	$20 00
Fees for serving declaration	2 00
	$22 00
2nd.—Int. on $9,805 12, damages awarded, from October 19 to Oct. 22d, 1868	$5 64

Clerk's fees.

Fil'g narr, rule copy cert'f'd and dock'g case; cal'r fees for dock'g 2 terms; paid express charges on papers; do. postage; fil'g papers, entries and copies of decision, &c.; maki'g judg't record, 617 fol., at 15 c.; final fee on tax'n and ent. judg't on proofs execution; transcript cert'f'd, &c., fil'g record, and costs, and copy cert'f'd	$104 05
Taxed at $131 69-100	$131 69

Oct. 23rd, 1858.

A. A. BOYCE, *Clerk.*

3	day's interest	on	$5,000 is	$2 88
3	"	"	4,000 is	2 30
3	"	"	800 is	46
3	"	"	—— ——	— —
				$5 64

18 Filed Oct. 22, 1868.

Pleas before the judges of the Circuit Court of the United States for the second circuit and northern district of New York, at the court-house in the city of Albany, of October term, one thousand eight hundred and sixty-eight.

Witness Hon. Samuel Nelson, one of the judges of said court.

A. A. BOYCE, *Clerk.*

Be it remembered that heretofore, that is to say, on the twentieth day of July, in and of the term of June, one thousand eight hundred and sixty-six, before the judges of said Circuit Court of the United States for the second circuit and northern district, at the court-house in the village of Canandaigua, in said northern district, came David M. Osborne and John H. Osborne, survivors of themselves, and Cyrus C. Dennis, deceased, by David Wright, their attorney, and brought into the said court, before the aforesaid judges thereof then there, their certain declaration against Joseph Gates, the assessor of internal revenue for the twenty-fourth district of the State of New York, which is in and within the said northern district of New York.

And there are pledges for the prosecution thereof, to wit, John Doe and Richard Roe, which declaration follows in these words, that is to say:

19 And whereas the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, previous to, in and during the month of March, one thousand eight hundred and sixty-five, made castings of iron of ten pounds weight for each casting, or less, of the aggregate value of $9,254 20.

And whereas the said last above-mentioned castings of iron were, in the month of April, one thousand eight hundred and sixty-five, wrongfully assessed by the said defendant as such assessor of internal revenue for said district, at the rate of five per cent. ad valorem thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant, as such assessor, to the sum of $462 11, he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount, independently of and separate from the tax to be assessed thereon as component parts of the machine when finished and ready for sale.

And whereas said assessment was wrongfully returned by said defendant as such assessor to the collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant, as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said D. M. Osborne & Co. the payment of the said last mentioned sum of $462 11 so as last aforesaid wrongfully

assessed upon said last above-mentioned castings of iron, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant, as such assessor as aforesaid, and that they, the said firm of D. M. Osborne & Co., were liable to the payment thereof, as manufacturers of said last above-mentioned castings of iron; and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of the said D. M. Osborne & Co.; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Aurburn, in the said 24th collection district, on the 29th day of April, one thousand eight hundred and sixty-five, they, the said D. M. Osborne & Co., paid to said collector as aforesaid, and said collector as aforesaid then and there wrongfully collected of the said D. M. Osborne & Co. the said last mentioned sum of $462 71, being the amount so as aforesaid wrongfully assessed and returned by said defendant, as such assessor, upon said last mentioned castings of iron, so as aforesaid made by the said D. M. Osborne & Co., previous to and in the said month of March, one thousand eight hundred and sixty-five.

And the said plaintiffs in fact say, that said last mentioned castings of iron were, and each and every one of them was made by the said D. M. Osborne and Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they, or any of them, ever in fact sold by them, the said D. M. Osborne & Co., to others, or in any wise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Orborne & Co., for sale as complete and finished machines.

And the said plaintiffs-in-fact further say, that said last above-mentioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles, nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use, as component parts of said particular machine. But on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in and as component parts of the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And said plaintiffs-in-fact further say, that at the time the said

last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said defendant as such assessor, and also at the time the said D. M. Osborne & Co. paid said last above-mentioned assessment or tax of $462 71 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor, when said assessment was made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not nor were any of them liable to such assessment or tax, as separate articles or independently, and they, the said D. M. Osborne & Co., at the same time protested against the assessment thereof, otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant as such assessor insisted upon his right to assess, and did wrongfully assess said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof, as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled the said D. M. Osborne & Co. to pay, and the said D. M. Osborne & Co. did, under such compulsion as aforesaid, pay to said collector the said last above-mentioned assessment or tax of $462 71, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co. Wherefore the said plaintiffs say, that the said firm of D. M. Osborne & Co. was injured, and sustained damages to the amount of the said sum of $462 71, for which, with interest thereon from the said 29th day of April, 1865, the said plaintiffs as such survivors as aforesaid bring this suit, &c.

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20 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of April, one thousand eight hundred and sixty-five, made castings of iron of ten pounds weight for each casting, or less, of the aggregate value of $1,313 44.

And whereas the said last above-mentioned castings of iron were in the month of May, one thousand eight hundred and sixty-five, wrongfully assessed by the said defendant, as such assessor, of internal revenue for said district, at the rate of six per cent. ad valorem thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $78 80; he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount, independently of and separate from the tax to be assessed thereon as component parts of the machine when finished and ready for sale.

And whereas said assessment was wrongfully returned by said defend-

ant as such assessor to the collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid of the said firm of D. M. Osborn & Co., and thereupon he, the said collector, demanded of the said D. M. Osborne & Co. the payment of the said last mentioned sum of $78 80 so as last aforesaid wrongfully assessed upon said last above mentioned castings of iron, claiming and insisting that he, the said collector, was in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said firm of D. M. Osborne & Co., were liable to the payment thereof, as manufacturers of said last above mentioned castings of iron; and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of the said D. M. Osborne & Co.; and thereupon and under the circumstances last above mentioned and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 31st day of May, one thousand eight hundred and sixty-five, they, the said D. M. Osborne & Co., paid to said collector as aforesaid, and said collector as aforesaid then and there wrongfully collected of the said D. M. Osborne & Co. the said last mentioned sum of $78 80, being the amount so as aforesaid wrongfully assessed and returned by said defendant as such assessor upon said last mentioned castings of iron, so as aforesaid made by the said D. M. Osborne & Co. during the said month of April, one thousand eight hundred and sixty-five.

And the said plaintiffs in fact say that said last mentioned castings of iron were, and each and every one of them was made by the said D M. Osborne and Co. in and at their said manufacturing establishments in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be, nor were they, or any of them, ever in fact, sold by them, the said D. M. Osborne & Co. to others, or in anywise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last

above mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And said plaintiffs in fact further say, that at the time the said last above mentioned castings of iron were so as aforesaid wrongfully assessed by said defendant as such assessor, and also at the time the said D. M. Osborne & Co. paid said last above mentioned assessment or tax of $78 80 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor, when said assessment was made, as also to said collector, when said last above mentioned tax was so as aforesaid paid to and collected by him, that said last above mentioned castings of iron were not, nor were any of them liable to such assessment or tax, as separate articles or independently, and they, the said D. M. Osborne & Co., at the same time protested against the assessment thereof, otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant as such assessor insisted upon his right to assess, and did wrongfully assess said last above mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof, as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled the said D. M. Osborne & Co. to pay, and the said D. M. Osborne & Co. did, under such compulsion as aforesaid, pay to said collector the said last above mentioned assessment or tax of $78 80, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiffs say that the said firm of D. M. Osborne & Co. was injured, and sustained damages to the amount of the said sum of $78 80, for which, with interest thereon from the said 31st day of May, 1865, the said plaintiffs as such survivors as aforesaid bring this suit, &c.

21 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of May, one thousand eight hundred and sixty-five, made castings of iron of ten pounds weight for each casting, or less, of the aggregate value of $1,566 71.

And whereas the said last above mentioned castings of iron were in the month of June, one thousand eight hundred and sixty-five, wrongfully assessed by the said defendant as such assessor of internal revenue for said district, at the rate of six per cent. ad valorem thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $94 01, he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claiming and insisting that said firm of D. M.

Osborne & Co. was liable to be assessed upon said last above mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount, independently of and separate from the tax to be assessed thereon, as component parts of the machine when finished and ready for sale.

And whereas said assessment was wrongfully returned by said defendant, as such assessor to the collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said D. M. Osborne & Co. the payment of the said last mentioned sum of $94 01 so as last aforesaid wrongfully assessed upon said last above mentioned castings of iron, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same upon and in virtue of said assessment and return so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said firm of D. M. Osborne & Co., were liable to the payment thereof, as manufacturers of said last above mentioned castings of iron; and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co. that then he, the said collector, would levy and collect the same, together with the penalties, costs, and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of the said D. M. Osborne & Co.; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 30th day of June, one thousand eight hundred and sixty-five, they, the said D. M. Osborne & Co., paid to said collector as aforesaid, and said collector as aforesaid then and there wrongfully collected of the said D. M. Osborne & Co., the said last mentioned sum of $94 01, being the amount so as aforesaid wrongfully assessed and returned by said defendant as such assessor upon said last mentioned castings of iron, so as aforesaid made by the said D. M. Osborne & Co. during the said month of May, one thousand eight hundred and sixty-five.

And the said plaintiffs in fact say that said last mentioned castings of iron were, and each and every one of them was made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be, nor were they, or any of them, ever in fact sold by them, the said D. M. Osborne & Co., to others or in any wise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last above mentioned castings of iron were so as aforesaid wrongfully assessed by said defendant as such assessor, and also at the time the said D. M. Osborne & Co. paid said last above mentioned assessment or tax of $94 01 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor when said assessment was made, as also to said collector when said last above mentioned tax was so as aforesaid paid to and collected by him, that said last above mentioned castings of iron were not, nor were any of them liable to such assessment or tax, as separate articles or independently, and they, the said D. M. Osborne & Co., at the same time protested against the assessment thereof, otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant as such assessor insisted upon his right to assess, and did wrongfully assess said last above mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled the said D. M. Osborne & Co. to pay, and the said D. M. Osborne & Co. did, under such compulsion as aforesaid, pay to said collector the said last above mentioned assessment or tax of $94 01, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiffs say that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the asid sum of $94 01 for which, with interest thereon from the said 30th day of June, 1865, the said plaintiffs as such survivors as aforesaid, bring this suit, &c.

22 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of June, one thousand eight hundred and sixty-five, made castings of iron of ten pounds weight for each casting, or less, of the aggregate value of $1,262 66.

And whereas the said last above mentioned castings of iron were,

in the month of July, one thousand eight hundred and sixty-five, wrongfully assessed by the said defendant as such assessor of internal revenue for said district, at the rate of six per cent. ad valorem thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $75 75, he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount, independently of and separate from the tax to be assessed thereon, as component parts of the machine when finished and ready for sale.

And whereas said assessment was wrongfully returned by said defendant, as such assessor, to the collector of the said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said D. M. Osborne & Co. the payment of the said last mentioned sum of $75 75, so as last aforesaid wrongfully assessed upon said last above mentioned castings of iron, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same upon and in virtue of said assessment and return so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said firm of D. M. Osborne & Co., were liable to the payment thereof as manufacturers of said last above mentioned castings of iron, and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of the said D. M. Osborne & Co.; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 20th day of July, one thousand eight hundred and sixty-five, they, the said D. M. Osborne & Co., paid to said collector as aforesaid, and said collector as aforesaid then and there wrongfully collected of the said D. M. Osborne & Co. the said last mentioned sum of $75 75, being the amount so as aforesaid wrongfully assessed and returned by said defendant as such assessor upon said last mentioned castings of iron, so as aforesaid made by the said D. M. Osborne & Co , during the said month of , one thousand eight hundred and sixty-five

And the said plaintiffs in fact say that said last mentioned castings of iron were, and each and every one of them was made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be,

nor were they or any of them, ever in fact sold by them, the said D. M. Osborne & Co., to others, or in any wise used or appropriated by them, nor were they or any of them intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles, nor had they, nor had any or either of them, any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in and as component parts of the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And said plaintiffs in fact further say, that at the time the said last above mentioned castings of iron were so as aforesaid wrongfully assessed by said defendant as such assessor, and also at the time the said D. M. Osborne & Co. paid said last above mentioned assessment or tax of $75 75 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor when said assesment was made as also to said collector when said last above mentioned tax was so as aforesaid paid to and collected by him, that said last above mentioned castings of iron were not, nor were any of them, liable to such assessment or tax as separate articles or independently, and they, the said D. M. Osborne & Co., at the same time protested against the assessment thereof, otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant as such assessor insisted upon his right to assess, and did wrongfully assess said last above mentioned castings of iron separately from said machines and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled the said D. M. Osborne & Co. to pay, and the said D. M. Osborne & Co. did, under such compulsion as aforesaid, pay to said collector the said last above mentioned assessment or tax of $75 75, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiffs say that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $, for which, with interest thereon from the said 20th day of July, 1865, the said plaintiffs as such survivors as aforesaid bring this suit, &c.

23 And whereas also the said D. M. Osborne & Co. so being the exclusive manufacturers of the said reapers and mowers,

known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of August, one thousand eight hundred and sixty-five, made castings of iron of ten pounds weight for each casting, or less, of the aggregate value of $182 63.

And whereas the said last above-mentioned castings of iron were in the month of September, one thousand eight hundred and sixty-five, wrongfully assessed by the said defendant as such assessor of internal revenue for said district, at the rate of six per cent. ad valorem thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $10 95, he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount, independently of and separate from the tax to be assessed thereon, as component parts of the machine when finished and ready for sale.

And whereas said assessment was wrongfully returned by said defendant, as such assessor to the collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said D. M. Osborne & Co. the payment of the said last mentioned sum of $10 95 so as last aforesaid wrongfully assessed upon said last above mentioned castings of iron, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said firm of D. M. Osborne & Co., were liable to the payment thereof, as manufacturers of said last above mentioned castings of iron; and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of the said D. M. Osborne & Co.; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 30th day of September, one thousand eight hundred and sixty-five, they, the said D. M. Osborne and Co., paid to said collector as aforesaid, and said collector as aforesaid then and there wrongfully collected of the said D. M. Osborne & Co., the said last mentioned sum of $10 95, being the amount so as aforesaid wrongfully assessed and returned by said defendant as such assessor upon said last mentioned castings of iron, so as aforesaid made by the said D. M. Osborne & Co., during the said month of August, one thousand eight hundred and sixty-five.

And the said plaintiffs in fact say that said last mentioned castings of iron were, and each and every one of them was made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they, or any of them, ever in fact, sold by them, the said D. M. Osborne & Co., to others, or in anywise used or appropriated by them, nor were they or any of them intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And said plaintiffs in fact further say, that at the time the said last above mentioned castings of iron were so as aforesaid wrongfully assessed by said defendant as such assessor, and also at the time the said D. M. Osborne & Co. paid said last above mentioned assessment or tax of $10 95 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor when said assessment was made, as also to said collector when said last above mentioned tax was so as aforesaid paid to and collected by him, that said last above mentioned castings of iron were not, nor were any of them liable to such assessment or tax, as separate articles or independently, and they, the said D. M. Osborne & Co., at the same time protested against the assessment thereof, otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant as such assessor insisted upon his right to assess, and did wrongfully assess said last above mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof, as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled the said D. M. Osborne & Co. to pay, and the said D. M. Osborne & Co. did, under such compulsion as aforesaid, pay to said collector the said last above mentioned assessment or tax of $10 95, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiffs say that the said firm of D. M. Osborne

& Co. was injured and sustained damages to the amount of the said sum of $, for which, with interest thereon from the said 30th day of September, 1865, the said plaintiffs as such survivors as aforesaid, bring this suit, &c.

24 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of September, one thousand eight hundred and sixty-five, made castings of iron of ten pounds weight for each casting, or less, of the aggregate value of $620 20.

And whereas the said last above mentioned castings of iron were in the month of October, one thousand eight hundred and sixty-five, wrongfully assessed by the said defendant as such assessor of internal revenue for said district, at the rate of six per cent. ad valorem thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $37 20, he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount, independently of and separate from the tax to be assessed thereon as component parts of the machine when finished and ready for sale.

And whereas said assessment was wrongfully returned by said defendant, as such assessor to the collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said D. M. Osborne & Co. the payment of the said last mentioned sum of $37 20, so as last aforesaid wrongfully assessed upon said last above mentioned castings of iron, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said firm of D. M. Osborne & Co., were liable to the payment thereof, as manufacturers of said last above mentioned castings of iron; and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of the said D. M. Osborne & Co.; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 31st day of October, one thousand eight hundred and sixty-five, they, the said D. M. Osborne & Co., paid to said collector

as aforesaid, and said collector as aforesaid then and there wrongfully collected of the said D. M. Osborne & Co., the said last mentioned sum of $37 20, being the amount so as aforesaid wrongfully assessed and returned by said defendant as such assessor upon said last mentioned castings of iron so as aforesaid made by the said D. M. Osborne & Co., during the said month of September, one thousand eight hundred and sixty-five.

And the said plaintiffs in fact say that said last mentioned castings of iron were, and each and every one of them was made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be, nor were they, or any of them, ever in fact, sold by them, the said D. M. Osborne & Co., to others, or in any wise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last above mentioned castings of iron were so as aforesaid wrongfully assessed by said defendant as such assessor, and also at the time the said D. M. Osborne & Co. paid said last above mentioned assessment or tax of $37 20 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor when said assessment was made, as also to said collector when said last above mentioned tax was so as aforesaid paid to and collected by him, that said last above mentioned castings of iron were not, nor were any of them liable to such assessment or tax, as separate articles or independently, and they, the said D. M. Osborne & Co., at the same time protested against the assessment thereof, otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant as such assessor insisted upon his right to assess, and did wrongfully assess said last above mentioned castings of iron separately from said machine, and as finished and manufactured articles, and independently of the intended use thereof, as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled the said D. M. Osborne & Co. to pay, and the said D. M. Osborne & Co. did, under such compulsion as aforesaid, pay to said collector the said last above mentioned assessment or tax of $37 20, notwithstanding the said objection and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiffs say, that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $37 20, for which, with interest thereon from the said 31st day of October, 1865, the said plaintiffs as such survivors as aforesaid bring this suit, &c.

25 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of October, one thousand eight hundred and sixty-five, made castings of iron of ten pounds weight, for each casting, or less, of the aggregate value of $1,000.

And whereas the said last above mentioned castings of iron were in the month of November, one thousand eight hundred and sixty-five, wrongfully assessed by the said defendant as such assessor of internal revenue for said district, at the rate of six per cent. ad valorem thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $60, he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount, independently of and separate from the tax to be assessed thereon, as component parts of the machine when finished and ready for sale.

And whereas said assessment was wrongfully returned by said defendant, as such assessor to the collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said D. M. Osborne & Co. the payment of the said last mentioned sum of $60, so as last aforesaid wrongfully assessed upon said last above mentioned castings of iron, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said firm of D. M. Osborne & Co., were liable to the payment thereof, as manufacturers of said last above mentioned castings of iron; and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector, would levy and collect the same, together with the penalties, costs, and expenses, as

provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of the said D. M. Osborne & Co.; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 30th day of November, one thousand eight hundred and sixty-five, they, the said D. M. Osborne & Co., paid to said collector as aforesaid, and said collector as aforesaid then and there wrongfully collected of the said D. M. Orborne & Co., the said last mentioned sum of $60, being the amount so as aforesaid wrongfully assessed and returned by said defendant as such assessor upon said last mentioned castings of iron, so as aforesaid made by the said D. M. Osborne & Co., during the said month of October, one thousand eight hundred and sixty-five.

And the said plaintiffs in fact say that said last mentioned castings of iron were, and each and every one of them was made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be, nor were they, or any of them, ever in fact, sold by them, the said D. M. Osborne & Co., to others, or in any wise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in and as component parts of the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last above mentioned castings of iron were so as aforesaid wrongfully assessed by said defendant as such assessor, and also at the time the said D. M. Osborne & Co. paid said last above-mentioned assessment or tax of $60 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor when said assessment was made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them liable to such assessment or tax, as separate articles or independently, as they, the said D. M. Osborne & Co., at the same

time protested against the assessment thereof, otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant as such assessor insisted upon his right to assess, and did wrongfully assess said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof, as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of and wrongfully compelled the said D. M. Osborne & Co. to pay, and the said D. M. Osborne & Co. did, under such compulsion as aforesaid, pay to said collector the said last above-mentioned assessment or tax of $60, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiffs say, that the said firm of D. M. Osborne & Co. was injured, and sustained damages to the amount of the said sum of $, for which, with interest thereon from said 30th day of November, 1865, the said plaintiffs as such survivors as aforesaid bring this suit, &c.

26 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of November, one thousand eight hundred and sixty-five, made castings of iron of ten pounds weight for each casting, or less, of the aggregate value of $1,459.

And whereas the said last above mentioned castings of iron were in the month of December, one thousand eight hundred and sixty-five, wrongfully assessed by the said defendant as such assessor of internal revenue for said district, at the rate of six per cent. ad valorem thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $87 54, he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount, independently of and separate from the tax to be assessed thereon, as component parts of the machine when finished and ready for sale.

And whereas said assessment was wrongfully returned by said defendant, as such assessor to the collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said D. M. Osborne & Co. the payment of the said last mentioned sum of $87 54, so as last aforesaid wrongfully assessed upon said last above mentioned castings of iron, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same upon and in virtue of said assess-

ment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said firm of D. M. Osborne & Co., were liable to the payment thereof, as manufacturers of said last above mentioned castings of iron; and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of the said D. M. Osborne & Co.; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 30th day of December, one thousand eight hundred and sixty-five, they, the said D. M. Osborne & Co., paid to said collector as aforesaid, and said collector as aforesaid then and there wrongfully collected of the said D. M. Osborne & Co. the said last mentioned sum of $87 54, being the amount so as aforesaid wrongfully assessed and returned by said defendant as such assessor upon said last mentioned castings of iron, so as aforesaid made by the said D. M. Osborne & Co., during the said month of November, one thousand eight hundred and sixty.

And the said plaintiffs in fact say that said last mentioned castings of iron were, and each and every one of them was made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be, nor were they, or any of them, ever in fact, sold by them, the said D. M. Osborne & Co., to others, or in any wise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last above mentioned castings of iron were so as aforesaid wrongfully assessed by said defendant as such assessor, and also at the time the said D. M. Osborne & Co. paid said last above mentioned assess-

ment or tax of $87 54 to said collector as aforesaid. they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor when said assessment was made, as also to said collector when said last above mentioned tax was so as aforesaid paid to and collected by him, that said last above mentioned castings of iron were not, nor were any of them liable to such assessment or tax, as separate articles or independently, and they, the said D. M. Osborne & Co., at the same time protested against the assessment thereof, otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant as such assessor insisted upon his right to assess, and did wrongfully assess said last above mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of and wrongfully compelled the said D. M. Osborne & Co. to pay, and the said D. M. Osborne & Co. did, under such compulsion as aforesaid, pay to said collector the said last above mentioned assessment or tax of $87 54, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiffs say, that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $87 54, for which, with interest thereon from the said 30th day of December, 1865, the said plaintiffs as such survivors as aforesaid bring this suit, &c.

27 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of December, one thousand eight hundred and sixty-five, made castings of iron of ten pounds weight for each casting, or less, of the aggregate value of $587 96.

And whereas the said last above-mentioned castings of iron were in the month of , one thousand eight hundred and sixty-six, wrongfully assessed by the said defendant as such assessor of internal revenue for said district, at the rate of six per cent. ad valorem thereof, amounting in the aggregate of tax thus wronfully assessed thereon by said defendant as such assessor to the sum of $35 27, he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount, independently of and separate from the tax to be assessed thereon as component parts of the machine when finished and ready for sale.

And whereas said assessment was wrongfully returned by said defendant, as such assessor to the collector of said 24th collection district, whereupon it became the official duty of said collector to pro-

ceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne, & Co., and thereupon he, the said collector, demanded of the said D. M. Osborne & Co. the payment of the said last mentioned sum of $35 27, so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said firm of D. M. Osborne & Co., were liable to the payment thereef, as manufacturers of said last above mentioned castings of iron; and threatening in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of the said D. M. Osborne & Co.; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 31st day of January, one thousand eight hundred and sixty-six, they, the said D. M. Osborne & Co., paid to the said collector as aforesaid, and said collector aforesaid then and there wrongfully collected of the said E. M. Osborne & Co., the said last mentioned sum of $35 27, being the amount so as aforesaid wrongfully assessed and returned by said defendant as such assessor upon said last mentioned castings of iron, so as aforesaid made by the said D. M. Osborne & Co., during the said month of December, one thousand eight hundred and sixty-five.

And the said plaintiffs in fact say that said last mentioned castings of iron were and each and every one of them was made by the said D. M. Osborne and Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be, nor were they or any of them, ever in fact sold by them, the said D. M. Osborne & Co., to others, or in any wise used or appropriated by them, nor were they or any of them intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and moving machines so as aforesaid exclusively manufactured by them, the said D. M Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles; nor had they nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for

use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of. the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And said plaintiffs in fact further say, that at the time the said last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said defendant as such assessor, and also at the time the said D. M. Osborne & Co. paid said last above-mentioned assessment or tax af $35 27 to said collector as aforesaid. they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor when said assessment was made, as also to said collector when said last above mentioned tax was so as aforesaid paid to and collected by him, that said last above mentioned castings of iron were not, nor were any of them liable to such assessment or tax, as separate articles or independently, and they, the said D. M. Osborne & Co., at the same time protested against the assessment thereof, otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant as such assessor insisted upon his right to assess, and did wrongfully assess said last above mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled the said D. M. Osborne & Co. to pay, and the said D. M. Osborne & Co. did, under such compulsion as aforesaid, pay to said collector the said last above mentioned assessment or tax of $35 27, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiffs say, that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said of $35 27, for which, with interest thereon from the said 31st day of January, 1866, the said plaintiffs as such survivors as aforesaid bring this suit, &c.

28 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of January, one thousand eight hundred and sixty-six, made castings of iron of ten pounds weight for each casting, or less, of the aggregate value of $400 78.

And whereas the said last above-mentioned castings of iron were in the month of February, one thousand eight hundred and sixty-six, wrongfully assessed by the said defendant as such assessor of internal revenue for said district, at the rate of six per cent. ad valorem thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $24 04, he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co., was liable to be assessed upon said last above-

mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount, independently of and separate from the tax to be assessed thereon as component parts of the machine when finished and ready for sale.

And whereas said assessment was wrongfully returned by said defendant, as such assessor, to the collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant, as such assessor as aforesaid, of the said firm of D. M. Osborne & Co , and thereupon he, the said collector, demanded of the said D. M. Osborne & Co., the payment of the said last-mentioned sum of $24 04 so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he, the said collector, was in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said firm of D. M. Osborne & Co., were liable to the payment thereof, as manufacturers of said last above-mentioned castings of iron; and threatening, in case payment thereof should be refused by the said C. M. Osborne & Co., that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of the said D. M. Osborne & Co.; and thereupon and under the circumstances last above-mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 28th day of February, one thousand eight hundred and sixty-six, they, the said D. M. Osborne & Co., paid to said collector as aforesaid, and said collector as aforesaid then and there wrongfully collected of the said D. M. Osborne & Co. the said last-mentioned sum of $24 04, being the amount so as aforesaid wrongfully assessed and returned by said defendant as such assessor upon said last-mentioned castings of iron, so as aforesaid made by the said D. M. Osborne & Co. during the said month of January, one thousand eight hundred and sixty-six.

And the said plaintiffs in fact say that said last mentioned castings of iron were, and each and every one of them was made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be, nor were they, or any of them, ever in fact, sold by them, the said D. M. Osborne & Co., to others, or in anywise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above-men-

tioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use, as component parts of said particular machine. But on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said defendant as such assessor, and also at the time the said D. M. Osborne & Co. paid said last above-mentioned assessment of tax of $24 04 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor when said assessment was made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them, liable to such assessment or tax as separate articles or independently, and they, the said D. M. Osborne & Co., at the same time protested against the assessment thereof otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant as such assessor insisted upon his right to assess, and did wrongfully assess, said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof, as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled the said D. M. Osborne & Co. to pay, and the said D. M. Osborne & Co. did, under such compulsion as aforesaid, pay to said collector the said last above-mentioned assessment of tax of $24 04, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiffs say, that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $24 04, for which, with interest thereon from the said 28th day of February, 1866, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

29 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of February, one thousand eight hundred and sixty-six, made castings of iron of ten pounds weight for each casting, or less, of the aggregate value of $880 79.

And whereas the said last above-mentioned castings of iron were, in the month of March, one thousand eight hundred and sixty-six,

wrongfully assessed by the said defendant, as such assessor of internal revenue for said district, at the rate of six per cent. ad valorem thereof, amounting in the agggregate of tax thus wrongfully assessed thereon by said defendant as such assessor, to the sum of $52 84, he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount, independently of and separate from the tax to be assessed thereon as component parts of the machine when finished and ready for sale.

And whereas said assessment was wrongfully returned by said defendant, as such assessor, to the collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant, as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said D. M. Osborne & Co. the payment of the said last-mentioned sum of $52 84, so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he, the said collector, was, in discharge of his official duty, bound to collect the same, upon and in virtue of said assessment and return so as aforesaid wrongfully made and returned to him by the said defendant as such assessor as aforesaid, and that they, the said firm of D. M. Osborne & Co., were liable to the payment thereof as manufacturers of said last above-mentioned castings of iron; and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of the said D M. Osborne & Co.; and thereupon and under the circumstances last above-mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 31st day of March, one thousand eight hundred and sixty-six, they, the said D. M. Osborne & Co., paid to said collector as aforesaid, and said collector as aforesaid then and there wrongfully collected of the said D. M. Osborne & Co., the last-mentioned sum of $52 84, being the amount so as aforesaid wrongfully assessed and returned by said defendant, as such assessor, upon said last-mentioned castings of iron so as aforesaid made by the said D. M. Osborne & Co. during the said month of February, one thousand eight hundred and sixty-six.

And the said plaintiffs in fact say that said last-mentioned castings of iron were, and each and every of them was, made by the said D. M. Osborne & Co. in and at their said manufacturing establishment, in the city of Auburn, to be used by them in the manufactnre of their said reapers and mowers as aforesaid; and the same were not, nor was any of them nor any part thereof, intended to be, nor were they or any of them, ever in fact, sold by them, the said D. M. Osborne

& Co. to others, or in anywise used or appropriated by them; nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say that the last above-mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles, nor had they, nor had any or either of them, any commercial value whatever independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine; but on the contrary thereof, the whole value of last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osbborne & Co. for sale as aforesaid.

And said plaintiffs in fact further say that at the time the last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said defendant as such assessor, and also at the time the said D. M. Osborne & Co. paid said last above-mentioned assessment or tax of $52 84 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor when said assessmant was made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them, liable to such assessment or tax as separate articles or independently; and they, the said D. M. Osborne & Co., at the same time protested against the assessment thereof otherwise than as forming necessary and component parts of said machines when finished and ready for sale. The said defendant, as such assessor, insisted upon his right to assess, and did wrongfully assess, said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled the said D. M. Osborne & Co. to pay, and the said D. M. Osborne & Co. did, under such compulsion as aforesaid, pay to said collector the last above-mentioned assessment or tax of $52 84, notwithstanding the said objection and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiffs say that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $52 84, for which, with interest thereon from the said 31st day of March, 1866, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

30 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing

establishment in the said city of Auburn, and within the 24th collection district of the said State of New York, in and during the month of March, one thousand eight hundred and sixty-six, made castings of iron of ten pound weight for each casting, or less, of the aggregate value of $1,207 28.

And whereas the said last above-mentioned castings of iron were in the month of April, one thousand eight hundred and sixty-six, wrongfully assessed by the said defendant as such assessor of internal revenue of said district, at the rate of six per cent. ad valorem thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant, as such assessor, to the sum of $72 43, he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount, independently of and separate from the tax to be assessed thereon as component parts of the machine when finished and ready for sale.

And whereas said assessment was wrongfully returned by said defendant, as such assessor, to the collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of D. M. Osborne & Co. the payment of the said last-mentioned sum of $72 43, so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said firm of D. M. Osborne & Co., was liable to the payment thereof as manufacturers of said last above-mentioned castings of iron, and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of the said D. M. Osborne & Co.; and thereupon, under the circumstances last above-mentioned, and under the objections and protest hereinafter, in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 1st day of May, one thousand eight hundred and sixty-six, they, the said D. M. Osborne & Co., paid to said collector as aforesaid, and said collector as aforesaid then and there wrongfully collected of the said D. M. Osborne & Co., the said last-mentioned sum of $72 43, being the amount so as aforesaid wrongfully assessed and returned by said defendant, as such assessor, upon said last mentioned castings of iron so as aforesaid made by the said D. M. Osborne & Co. during the month of March, one thousand eight hundred and sixty-six.

And the said plaintiffs in fact say that said last-mentioned castings of iron were, and each and every one of them was, made by the said D. M. Osborne & Co. in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be, nor were they or any of them ever, in fact, sold by them, the said D. M. Osborne & Co. or others, or in anywise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above-mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles, nor had they, nor had any or either of them, any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said defendant as such assessor, and also at the time the said D. M. Osborne & Co. paid said last above-mentioned assessment or tax of $72 43 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor when said assessment was made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them, liable to such assessment or tax as separate articles or independently, and they, the said D. M. Osborne & Co., at the same time protested against the assessment thereof otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant, as such assessor, insisted upon his right to assess, and did wrongfully assess, said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled the said D. M. Osborne & Co., to pay, and the said D. M. Osborne & Co. did, under such compulsion as aforesaid, pay to said collector the said last above-mentioned assessment or tax of $72 43, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiffs say that the said firm of D. M.

Osborne & Co. was injured and sustained damages to the amount of the said sum of $72 43, for which, with interest thereon from the said 1st day of May, 1866, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

31 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of April, one thousand eight hundred and sixty-six, made castings of iron of ten pounds weight for each casting, or less, of the aggregate value of $1.141 47.

And whereas the said last above-mentioned castings of iron, were in the month of May, one thousand eight hundred and sixty-six, wrongfully assessed by the said defendant, as such assessor of internal revenue for said district, at the rate of six per cent. ad valorem thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $68 48; he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co., was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount, independently of and separate from the tax to be assessed thereon, as component parts of the machine when finished and ready for sale.

And whereas said assessment was wrongfully returned by said defendant, as such assessor, to the collector of the 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said D. M. Osborne & Co. the payment of the last-mentioned sum of $68 48, so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he, the said collector, was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said firm of D. M. Osborne & Co., were liable to the payment thereof, as manufacturers of the last above-mentioned castings of iron, and threatening in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of the said D. M. Osborne & Co.; and thereupon and under the circumstances last above-mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 30th day of May, one thousand eight hundred and sixty-six, they, the said D. M. Osborne & Co., paid to said

collector as aforesaid, and said collector as aforesaid then and there wrongfully collected of the said D. M. Osborne & Co., the said last-mentioned sum of $68 48, being the amount so as aforesaid wrongfully assessed and returned by said defendant as such assessor upon said last-mentioned castings of iron, so as aforesaid made by the said D. M. Osborne & Co. during the said month of April, one thousand eight hundred and sixty-six.

And the said plaintiffs in fact say, that said last-mentioned castings of iron were, and each and every one of them was, made by the said D. M. Osborne and Co. in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be, nor were they, or any of them, ever in fact sold by them, the said D. M. Osborne & Co., to others, or in anywise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co. for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last-mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles, nor had they, nor had any or either of them, any commercial value whatever independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine; but on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said defendant as such assessor, and also at the time the said D. M. Osborne & Co. paid said last above-mentioned assessment or tax of $68 48 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assesor when said assessment made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them, liable to such assessment or tax as separate articles or independently, and they, the said D. M. Osborne & Co., at the same time protested against the assessment thereof otherwise than as forming necessary and component parts of said machines when finished and ready for sale; but said defendant, as such assessor, insisted upon his right to assess, and did wrongfully assess, said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled the said D. M. Osborne & Co., to pay, and the said M. D. Osborne & Co. did, under such compulsion as aforesaid, pay to said collector the said last above-mentioned assessment or tax of $68 48, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.: wherefore the said plaintiffs say, that the said firm of D. M. Osborne & Co. was injured, and sustained damages to the amount of the said sum of $68 48, for which, with interest thereon from the said 30th day of May, 1866, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

32 And whereas also the said D. M. Osborne & Co., being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of May, one thousand eight hundred and sixty-six, made castings of iron of ten pounds weight for each casting, or less, of the aggregate value of $1,311.

And whereas the said last above-mentioned castings of iron were, in the month of June, one thousand eight hundred and sixty-six, wrongfully assessed by the said defendant, as such assessor of internal revenue for said district, at the rate of six per cent. ad valorem thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $78 66, he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount, independently of and separate from the tax to be assessed thereon as component parts of the machine when finished and ready for sale.

And whereas said assessment was wrongfully returned by said defendant as such assessor to the collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies, so wrongfully assessed and wrongfully returned by said defendant as such asssessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said D. M. Osborne & Co. the payment of the said last-mentioned sum of $78 66, so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he, the said collector, was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said firm of D. M. Osborne & Co., were liable to the payment thereof, as manufacturers of said last above-mentioned castings of iron, and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then, he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law

in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of the said D. M. Osborne & Co.; and thereupon, and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the city of Auburn, in the said 24th collection district, on the 2nd day of July, one thousand eight hundred and sixty-six, they, the said D. M. Osborne and Co., paid to said collector as aforesaid, and said collector as aforesaid then and there wrongfully collected of the said D. M. Osborne & Co. the said last-mentioned sum of $78 66, being the amount so as aforesaid wrongfully assessed and returned by said defendant as such assessor upon said last-mentioned castings of iron so as aforesaid made by the said D. M. Osborne & Co. during the said month of May, one thousand eight hundred and sixty-six.

And the said plaintiffs in fact say that said last-mentioned castings of iron were, and each and every one of them was, made by the said D. M. Osborne & Co. in and at their said manufacturing establishment in said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof intended to be, nor were they or any of them ever in fact, sold by them, the said D. M. Osborne & Co., to others, or in anywise used or appropriated by them, nor were they or any of them intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above-mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles; nor had they, nor had either of them, any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But, on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in and as component parts of the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And said plaintiffs in fact further say, that at the time the said last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said defendant as such assessor, and also at the time the said D. M. Osborne & Co. paid said last above mentioned assessment or tax of $78 66 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor when said assessment was made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them, liable to such assessment or tax as separate articles or independently, and they, the said D. M. Osborne & Co., at the same time protested against the assessment thereof otherwise than as forming

necessary and component parts of said machines when finished and ready for sale. But said defendant as such assessor insisted upon his right to assess, and did wrongfully assess, said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled the said D. M. Osborne & Co. to pay, and the said D. M. Osborne & Co. did, under compulsion as aforesaid, pay to said collector the said last above-mentioned assessment or tax of $78 66, notwithstanding the said objections and protests of them, the said D. M. Osborne & Co.; wherefore the said plaintiffs say, that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $78 66; for which, with interest thereon from the said 2nd day of July, 1866, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

33 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, previous to, in and during the month of March, one thousand eight hundred and sixty-five, made castings of iron exceeding ten pounds weight for each casting, of the aggregate weight of 679 tons.

And whereas the said last above-mentioned castings of iron were, in the month of April, one thousand eight hundred and sixty-five, wrongfully assessed by the said defendant as such assessor of internal revenue for said district, at the rate of three dollars per ton, amounting in the aggregate of tax thus assessed thereon by said assessor to the sum of $2,037, he the said defendant, as such assessor as aforesaid, wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount.

And whereas said assessment was wrongfully returned by said defendant, as such assessor as aforesaid, to the collector of said 24th collection district, whereby it became the duty of said collector to proceed and collect said monies so wrongfully assessed by said defendant as such assessor as aforesaid to said firm of D. M. Osborne & Co., of them, the said D. M. Osborne & Co., and thereupon he, the said collector, demanded of them, the said D. M. Osborne & Co., the payment of the said last-mentioned sum of $2,037, so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he, the said collector, was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said D. M. Osborne & Co., were liable to the payment thereof as manufacturers of said last above-mentioned castings of

iron, and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector as aforesaid, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment and tax upon and from the property of them, the said D. M. Osborne & Co., and thereupon and under the circumstances last above-mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 29th day of April, one thousand eight hundred and sixty-five, they, the said D. M. Osborne & Co., paid to said collector, and said collector then and there wrongfully collected of them, the said D. M. Osborne & Co., the said last-mentioned sum of $2,037, being the amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid upon said last-mentioned castings of iron, so as aforesaid made by them, the said D. M. Osborne & Co., previous to and during the said month of March, one thousand eight hundred and sixty-five.

And the said plaintiffs in fact say that said last-mentioned castings of iron were, and each and every one of them was, made by the said D. M. Osborne and Co. in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they, or any of them, ever in fact sold by them, the said D. M. Osborne & Co., to others, or in anywise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them, to or for any other use or purpose than as component or necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above-mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said assessor, and also at the time they, the said D. M. Osborne & Co. paid said last above-mentioned assessment or tax of $2,037 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid when said assessment was so as aforesaid wrongfully made, as also to said collector when said last above-mentioned tax was so as aforesaid

paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them liable to such assessment or tax, as separate articles or independently, and they, these plaintiffs, at the same time protested against the assessment thereof, otherwise than as forming necessary and component parts of said machines, when finished and ready for sale. But said defendant, as such assessor wrongfully insisted upon his right to assess, and did wrongfully assess said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof, as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled them, the said D. M. Osborne & Co., to pay, and they, the said D. M. Osborne & Co., did, under such compulsion as aforesaid, pay to said collector the said last above-mentioned assessment or tax of $2,037, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiff says that the said firm of D. M. Osborne & Co. was injured, and sustained damages to the amount of the said sum of $2,037, for which, with interest thereon from the said 29th day of April, 1865, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

34 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of April, one thousand eight hundred and sixty-five, made castings of iron, exceeding ten pounds weight for each casting, of the aggregate weight of 96½ tons.

And whereas the said last above mentioned castings of iron were, in the month of May one thousand eight hundred and sixty-five, wrongfully assessed by the said defendant, as such assessor of internal revenue for said district, at the rate of three dollars and sixty cents per ton, amounting in the aggregate of tax thus assessed thereon by said assessor to the sum of $1,313 44; he, the said defendant, as such assessor as aforesaid, wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount.

And whereas said assessment was wrongfully returned by said defendant, as such assessor as aforesaid, to the collector of said 24th collection district, whereby it became the duty of said collector to proceed and collect said monies so wrongfully assessed by said defendant as such assessor as aforesaid to said firm of D. M. Osborne & Co., of them the said D. M. Osborne & Co., and thereupon he, the said collector, demanded of them, the said D. M. Osborne & Co. the payment of the said last-mentioned sum of $1,313 44, so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he the said collector was, in discharge of his official duty, bound to collect the same upon and in virtue of said

assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said D. M. Osborne & Co. were liable to the payment thereof, as manufacturers of said last above-mentioned castings of iron; and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector as aforesaid, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment and tax, upon and from the property of them, the said D. M. Osborne & Co.; and thereupon, and under the circumstances last above-mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 1st day of May, one thousand eight hundred and sixty-five, they, the said D. M. Osborne & Co., paid to said collector, and said collector then and there wrongfully collected of them, the said D. M. Osborne & Co., the said last-mentioned sum of $1,313 44, being the amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid upon said last mentioned castings of iron, so as aforesaid made by them, the said D. M. Osborne & Co., during the said month of April, one thousand eight hundred and sixty-five.

And the said plaintiffs in fact say that said last mentioned castings of iron were, and each and every one of them was, made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid; and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they or any of them ever in fact sold by them, the said D. M. Osborne & Co., to others, or in anywise used or appropriated by them; nor were they or any of them intended to be sold, used or appropriated by them to or for any other use or purpose than as component or necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them, any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine; but on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said assessor, and also at the time they, the said D. M. Osborne & Co., paid said last above-mentioned assessment or tax of

$1,313 44 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid when said assessment was so as aforesaid wrongfully made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them, liable to such assessment or tax, as separate articles or independently; and they, these plaintiffs, at the same time protested against the assessment thereof, otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant as such assessor wrongfully insisted upon his right to assess, and did wrongfully assess, said last above mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled them, the said D. M. Osborne & Co., to pay, and they, the said D. M. Osborne & Co., did, under such compulsion as aforesaid, pay to said collector the said last above mentioned assessment or tax of $1,313 44, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiff says, that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $1,313 44, for which, with interest thereon from the said 1st day of May, 1865, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

35 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of May, one thousand eight hundred and sixty-five, made castings of iron exceeding ten pounds weight for each casting, of the aggregate weight of 128$\frac{4}{5}$ tons.

And whereas the said last above-mentioned castings of iron were, in the month of , one thousand eight hundred and sixty-five, wrongfully assessed by the said defendant as such assessor of Internal Revenue for said district, at the rate of three dollars and sixty cents per ton, amounting in the aggregate of tax thus assessed thereon by said assessor to the sum of $463 68, he, the said defendant as such assessor as aforesaid, wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co , was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount.

And whereas said assessment was wrongfully returned by said defendant as such assessor as aforesaid, to the collector of said 24th collection district, whereby it became the duty of said collector to proceed and collect said monies so wrongfully assessed by said defendant as such assessor as aforesaid to said firm of D. M. Osborne & Co., of them, the said D. M. Osborne & Co., and thereupon he, the

said collector, demanded of them, the said D. M. Osborne & Co., the payment of the said last mentioned sum of $463 68, so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he the said collector was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said D. M. Osborne & Co., were liable to the payment thereof as manufacturers of said last above mentioned castings of iron, and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector as aforesaid, would levy and collect the same, together with the penalties, costs, and expenses as provided by law in cases of refusal to pay a legal and proper assessment and tax, upon and from the property of them, the said D. M. Osborne & Co.; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter and in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district on the 30th day of June, one thousand eight hundred and sixty-five, they, the said D. M. Osborne & Co., paid to said collector, and said collector then and there wrongfully collected of them, the said D. M. Osborne & Co., the said last-mentioned sum of $463 68, being the amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid upon said last mentioned castings of iron so as aforesaid made by them, the said D. M. Osborne & Co., during the said month of May, one thousand eight hundred and sixty-five.

And the said plaintiffs in fact say, that said last mentioned castings of iron were, and each and every one of them was, made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them, nor any part thereof intended to be, nor were they or any of them ever in fact sold by them, the said D. M. Osborne & Co , to others, or in any wise used or appropriated by them, nor were they nor any of them intended to be sold, used or appropriated by them to or for any other use or purpose than as component or necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above-mentioned castings of iron were not nor were any of them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them, any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaption for use in and as component parts of the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And said plaintiffs in fact further say, that at the time the said last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said assessor, and also at the time they, the said D. M Osborne & Co., paid said last above-mentioned assessment or tax of $463 68 to said collector aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid, when said assessment was so as aforesaid wrongfully made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them, liable to such assessment or tax as separate articles or independently, and they, these plaintiffs, at the same time protested against the assessment thereof, otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant as such assessor wrongfully insisted upon his right to assess, and did wrongfully assess, said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled them, the said D. M. Osborne & Co., to pay, and they, the said D. M. Osborne & Co., did, under such compulsion as aforesaid, pay to said collector the said last above mentioned assessment or tax of $463 68, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co ; wherefore the said plaintiff says, that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $463 68, for which, with interest thereon from the said 30th day of June, 1865, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

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36 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of June, one thousand eight hundred and sixty-five, made castings of iron exceeding ten pounds weight for each casting, of the aggregate weight of 114½ tons.

And whereas the said last above-mentioned castings of iron were, in the month of July, one thousand eight hundred and sixty-five, wrongfully assessed by the said defendant as such assessor of internal revenue for said district, at the rate of three dollars and sixty cents per ton, amounting in the aggregate of tax thus assessed thereon by said assessor to the sum of $412 20; he the said defendant, as such assessor as aforesaid, wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount.

And whereas said assessment was wrongfully returned by said defendant, as such assessor as aforesaid, to the collector of said 24th

collection district, whereby it became the duty of said collector to proceed and collect said monies so wrongfully assessed by said defendant as such assessor as aforesaid to said firm of D. M. Osborne & Co., of them, the said D. M. Osborne & Co., and thereupon he, the said collector demanded of them, the said D. M. Osborne & Co., the payment of the said last-mentioned sum of $412 20, so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said D. M. Osborne & Co., were liable to the payment thereof, as manufacturers of said last above-mentioned castings of iron, and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector as aforesaid, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment and tax upon and from the property of them, the said D. M. Osborne & Co.; and thereupon and under the circumstances last above-mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 20th day of July, one thousand eight hundred and sixty-five, they, the said D. M. Osborne & Co., paid to said collector, and said collector then and there wrongfully collected of them, the said D. M. Osborne & Co., the last mentioned sum of $412 20, being the amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid upon said last-mentioned castings of iron, so as aforesaid made by them, the said D. M. Osborne & Co., during the month of June, one thousand eight hundred and sixty-five.

And the said plaintiffs in fact say that said last-mentioned castings of iron were, and each and every one of them was made by the said D. M. Osborne & Co. in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be, nor were they or any of them ever in fact sold by them, the said D. M. Osborne & Co., to others, or in anywise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component or necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above-mentioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them, any commercial value whatever independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine; but on the contrary thereof, the whole value of said

last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last above-mentioned castings were so as aforesaid wrongfully assessed by said assessor, and also at the time they, the said D. M. Osborne & Co., paid said last above-mentioned assessment or tax of $412 20 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid when said assessment was so as aforesaid wrongfully made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them, liable to such assessment or tax, as separate articles or independently, and they, these plaintiffs, at the same time protested against the assessment thereof otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant, as such assessor wrongfully insisted upon his right to assess, and did wrongfully assess said last above-mentioned castings of iron separately from said machines, and as finished and manufactured article, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled them, the said D. M. Osborne & Co., to pay, and they, the said D. M. Osborne & Co., did under such compulsion as aforesaid, pay to said collector the said last above-mentioned assessment or tax of $412 20, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiff says that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $412 20, for which, with interest thereon from the said 20th day of July, 1865, the said plaintiffs, as such survivors aforesaid, bring this suit, &c.

37 And whereas also the said D. M. Osborne & Co., so being the exclusive manufactures of the said reapers and mowers known as the Kirby Harvester and Mower, at their said manufacturing establishment in the city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of August, one thousand eight hundred and sixty-five, made castings of iron exceeding ten pounds weight for each casting, of the aggregate weight of 11½ tons.

And whereas the said last above-mentioned castings of iron, were in the month of September, one thousand eight hundred and sixty-five, wrongfully assessed by the said defendant, as such assessor of internal revenue for said district, at the rate of three dollars and sixty cents per ton, amounting in the aggregate of tax thus assessed thereon by said assessor, to the sum of $41 44; he, the said defendant, as such assessor as aforesaid, wrongfully and illegally claim-

ing and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount.

And whereas said assessment was wrongfully returned by said defendant, as such assessor as aforesaid, to the collector of said 24th collection district, whereby it became the duty of said collector to proceed and collect said moneys so wrongfully assessed by said defendant, as such assessor as aforesaid, to said firm of D. M. Osborne & Co., of them, the said D. M. Osborne & Co., and thereupon he, the said collector, demanded of them, the said D. M. Osborne & Co., the payment of the last-mentioned sum of $41 44, so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he, the said collector, was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return so as aforesaid wrongfully made and returned to him by said defendant, as such assessor as aforesaid, and that they, the said D. M. Osborne & Co. were liable to the payment thereof, as manufacturers of said last above-mentioned castings of iron; and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector as aforesaid, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment and tax, upon and from the property of them, the said D. M. Osborne & Co.; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 30th day of September, one thousand eight hundred and sixty-five, they, the said D. M. Osborne & Co., paid to said collector, and said collector then and there wrongfully collected of them, the said D. M. Osborne & Co., the said last mentioned sum of $41 44, being the amount so as aforesaid wrongfully assessed by said defendant, as such assessor as aforesaid, upon said last mentioned castings of iron, so as aforesaid made by them, the said D. M. Osborne & Co., during the said month of August, one thousand eight hundred and sixty-five.

And the said plaintiffs in fact say that said last-mentioned castings of iron were, and each and every one of them was made by the said D. M. Osborne & Co. in and at their said manufacturing establishment in the city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they or any of them ever in fact sold by them, the said D. M. Osborne & Co., to others, or in anywise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component or necessary parts of the reaping and mowing machines, so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not, nor were any of them known to

dealers in the trade of such or similar articles, nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use, as component parts of said particular machine; but on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said assessor, and also at the time they, the said D. M. Osborne & Co., paid said last above mentioned assessment or tax of $41 44 to said collector, as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid when said assessment was so as aforesaid wrongfully made, as also to said collector when said last above mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them, liable to such assessment or tax, as separate articles or independently, and they, these plaintiffs, at the same time protested against the assessment thereof, otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant, as such assessor, wrongfully insisted upon his right to assess, and did wrongfully assess said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled them, the said D. M. Osborne & Co., to pay, and they, the said D. M. Osborne & Co., did, under such compulsion as aforesaid, pay to said collector the said last above-mentioned assessment or tax of $41 44, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiff says that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $41 44, for which, with interest thereon from the said 30th day of September, 1865, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

38 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacterers of the said reapers and mowers known as the Kirby Harvester and Mower, at their manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of September, one thousand eight hundred and sixty-five, made castings of iron exceeding ten pounds weight for each casting, of the aggregate weight of 49½ tons.

And whereas the said last above-mentioned castings of iron were in the month of October, one thousand eight hundred and sixty-five,

wrongfully assessed by the said defendant, as such assessor of internal revenue for said district, at the rate of three dollars and sixty cents per ton, amounting in the aggregate of tax thus assessed thereon by said assessor to the sum of $177 60; he the said defendant, as such assessor as aforesaid, wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount.

And whereas said assessment was wrongfully returned by said defendant, as such assessor as aforesaid, to the collector of said 24th collection district, whereby it became the duty of said collector to proceed and collect said monies so wrongfully assessed by said defendant, as such assessor as aforesaid to said firm of D. M. Osborne & Co., of them, the said D. M. Osborne & Co., and thereupon he, the said collector demanded of them, the said D. M. Osborne & Co., the payment of the said last mentioned sum of $177 60, so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he, the said collector, was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said D. M. Osborne & Co., were liable to the payment thereof, as manufacturers of said last above-mentioned castings of iron, and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector as aforesaid, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment and tax, upon and from the property of them, the said D. M. Osborne & Co.; and thereupon and under the circumstances last above-mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 30th day of November, one thousand eight hundred and sixty-five, they, the said D. M. Osborne & Co., paid to said collector, and said collector then and there wrongfully collected of them, the said D. M. Osborne & Co., the said last-mentioned sum of $177 60, being the amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid upon said last mentioned castings of iron, so as aforesaid made by them, the said D. M. Osborne & Co., during the said month of September, one thousand eight hundred and sixty-five.

And the said plaintiffs in fact say that said last mentioned castings of iron were, and each and every one of them was, made by the said D. M. Osborne & Co. in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be, nor were they, or any of them ever, in fact, sold by them, the said D. M. Osborne & Co., to others, or in anywise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as

component or necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co. for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above-mentioned castings of iron were not, nor were any them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them, any commercial value whatever independent of or greater than the materials from which they were made, except to be finished and fitted for use, as component parts of said particular machine. But on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said assessor, and also at the time they, the said D. M. Osborne & Co., paid said last above-mentioned assessment or tax of $177 60 to said collector as aforesaid, they, the said D. M. Osborne & Co. insisted, as well to said defendant as such assessor as aforesaid when said assessment was so as aforesaid wrongfully made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them, liable to such assessment or tax, as separate articles or independently, and they, these plaintiffs, at the same time protested against the assessment thereof otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant as such assessor wrongfully insisted upon his right to assess, and did wrongfully assess said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled them, the said D. M. Osborne & Co., to pay, and they, the said D. M. Osborne & Co. did, under such compulsion as aforesaid, pay to said collector the said last above-mentioned assessment or tax of $177 60, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiff says that the firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $177 60, for which, with interest thereon from the said 30th day of November, 1865, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

39 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during

the month of October, one thousand eight hundred and sixty-five, made castings of iron exceeding ten pounds weight for each casting, of the aggregate weight of $84\frac{1}{10}$ tons.

And whereas the said last above-mentioned castings of iron were in the month of December, one thousand eight hundred and sixty-five, wrongfully assessed by the said defendant, as such assessor of internal revenue for said district, at the rate of three dollars and sixty cents per ton, amounting in the aggregate of tax thus assessed thereon by said assessor to the sum of $302 76, he, the said defendant, as such assessor as aforesaid, wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount.

And whereas said assessment was wrongfully returned by said defendant, as such assessor as aforesaid, to the collector of said 24th collection district, whereby it became the duty of said collector to proceed and collect said monies so wrongfully assessed by said defendant, as such assessor as aforesaid, to said firm of D. M. Osborne & Co., of them, the said D. M. Osborne & Co., and thereupon he, the said collector, demanded of them, the said D. M. Osborne & Co., the payment of the said last-mentioned sum of $302 76, so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same upon and in virtue of said assessment and return so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said D. M. Osborne & Co., were liable to the payment thereof, as manufacturers of said last above-mentioned castings of iron, and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector as aforesaid, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment and tax, upon and from the property of them, the said D. M. Osborne & Co.; and thereupon and under the circumstances last above-mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 30th day of November, one thousand eight hundred and sixty- . they, the said D. M. Osborne & Co., paid to said collector, and said collector then and there wrongfully collected of them, the said D. M. Osborne & Co., the said last-mentioned sum of $302 76, being the amount so as aforesaid wrongfully assessed by said defendant, as such assessor as aforesaid, upon said last-mentioned castings of iron, so as aforesaid made by them, the said D. M. Osborne & Co., during the said month of October, one thousand eight hundred and sixty-five.

And the said plaintiffs in fact say that said last-mentioned castings of iron were, and each and every one of them was, made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manu-

facture of their said reapers and mowers as aforesaid month of No-
were not, nor was any of them, nor any part thereof, in.
nor were they, or any of them, ever, in fact, sold by the[i]d castings
D. M. Osborne & Co., to others, or in anywise used or appr[o]the said
by them, nor were they, or any of them, intended to be sold, lish-
or appropriated by them to or for any other use or purpose tha[n] u-
component or necessary parts of the reaping and mowing machine
so as aforesaid exclusively manufactured by them, the said D. M.
Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say that said last above-mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them, any commercial value whatever independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine; but on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last above-mentioned castings of iron were, so as aforesaid, wrongfully assessed by said assessor, and also at the time they, the said D. M. Osborne & Co., paid said last above-mentioned assessment or tax of $302 76 to said collector, as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid, when said assessment was so as aforesaid wrongfully made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him that said last above-mentioned castings of iron were not, nor were any of them, liable to such assessment or tax as separate articles or independently, and they, these plaintiffs, at the same time protested against the assessment thereof otherwise than as forming necessary and component parts of said machines when finished and ready for sale; but said defendant, as such assessor, wrongfully insisted upon his right to assess, and did wrongfully assess said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled them, the said D. M. Osborne & Co., to pay, and they, the said D. M. Osborne & Co., did, under such compulsion as aforesaid, pay to said collector the said last above-mentioned assessment or tax of $302 76, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiff says that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $302 76, for which, with

the month of October, one thousand eight hundred and sixty-five, made castings of iron exceeding ten pounds weight for each casting, of the aggregate weight of $84\frac{1}{10}$ tons.

And whereas the said last above-mentioned castings of iron were in the month of December, one thousand eight hundred and sixty-five, wrongfully assessed by the said defendant, as such assessor of internal revenue for said district, at the rate of three dollars and sixty cents per ton, amounting in the aggregate of tax thus assessed thereon by said assessor to the sum of $302 76, he, the said defendant, as such assessor as aforesaid, wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount.

And whereas said assessment was wrongfully returned by said defendant, as such assessor as aforesaid, to the collector of said 24th collection district, whereby it became the duty of said collector to proceed and collect said monies so wrongfully assessed by said defendant, as such assessor as aforesaid, to said firm of D. M. Osborne & Co., of them, the said D. M. Osborne & Co., and thereupon he, the said collector, demanded of them, the said D. M. Osborne & Co., the payment of the said last-mentioned sum of $302 76, so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same upon and in virtue of said assessment and return so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said D. M. Osborne & Co., were liable to the payment thereof, as manufacturers of said last above-mentioned castings of iron, and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector as aforesaid, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment and tax, upon and from the property of them, the said D. M. Osborne & Co.; and thereupon and under the circumstances last above-mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 30th day of November, one thousand eight hundred and sixty- . they, the said D. M. Osborne & Co., paid to said collector, and said collector then and there wrongfully collected of them, the said D. M. Osborne & Co., the said last-mentioned sum of $302 76, being the amount so as aforesaid wrongfully assessed by said defendant, as such assessor as aforesaid, upon said last-mentioned castings of iron, so as aforesaid made by them, the said D. M. Osborne & Co., during the said month of October, one thousand eight hundred and sixty-five.

And the said plaintiffs in fact say that said last-mentioned castings of iron were, and each and every one of them was, made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manu-

facture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them, nor any part thereof, intended to be. nor were they, or any of them, ever, in fact, sold by them, the said D. M. Osborne & Co., to others, or in anywise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component or necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say that said last above-mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them, any commercial value whatever independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine; but on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last above-mentioned castings of iron were, so as aforesaid, wrongfully assessed by said assessor, and also at the time they, the said D. M. Osborne & Co., paid said last above-mentioned assessment or tax of $302 76 to said collector, as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid, when said assessment was so as aforesaid wrongfully made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him that said last above-mentioned castings of iron were not, nor were any of them, liable to such assessment or tax as separate articles or independently, and they, these plaintiffs, at the same time protested against the assessment thereof otherwise than as forming necessary and component parts of said machines when finished and ready for sale; but said defendant, as such assessor, wrongfully insisted upon his right to assess, and did wrongfully assess said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled them, the said D. M. Osborne & Co., to pay, and they, the said D. M. Osborne & Co., did, under such compulsion as aforesaid, pay to said collector the said last above-mentioned assessment or tax of $302 76, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiff says that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $302 76, for which, with

interest thereon from the said 30th day of November, 1865, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

40 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said City of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of November, one thousand eight hundred and sixty-five, made castings of iron exceeding ten pounds weight for each casting, of the aggregate weight of 96⅓ tons.

And whereas the said last above-mentioned castings of iron, were in the month of December, one thousand eight hundred and sixty-five, wrongfully assessed by the said defendant, as such assessor of internal revenue for said district, at the rate of three dollars and sixty cents per ton, amounting in the aggregate of tax thus assessed thereon by said assessor to the sum of $346 80; he the said defendant, as such assessor as aforesaid, wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co., was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount.

And whereas said assessment was wrongfully returned by said defendant, as such assessor as aforesaid, to the collector of said 24th collection district, whereby it became the duty of said collector to proceed and collect said moneys so wrongfully assessed by said defendant, as such assessor as aforesaid, to said firm of D. M. Osborne & Co., of them, the said D. M. Osborne & Co., and thereupon he, the said collector demanded of them, the said D. M. Osborne & Co., the payment of the said last-mentioned sum of $346 80, so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he, the said collector was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said D. M. Osborne & Co., are liable to the payment thereof, as manufacturers of said last above-mentioned castings of iron; and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector as aforesaid, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment and tax, upon and from the property of them, the said D. M. Osborne & Co.; and thereupon and under the circumstances last above-mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 30th day of December, one thousand eight hundred and sixty-five, they, the said D. M. Osborne & Co., paid to said collector, and said collector then and there wrongfully collected of them, the said D. M. Osborne & Co., the said last-mentioned sum of $346 80, being the amount so as aforesaid wrongfully assessed by said defendant, as such assessor as aforesaid, upon said last-mentioned castings of iron, so as aforesaid made

by them, the said D. M. Osborne & Co., during the said month of November, one thousand eight hundred and sixty-five.

And the said plaintiffs in fact say that said last-mentioned castings of iron were, and each and every one of them was, made by the said D. M. Osborne and Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof intended to be, nor were they, or any of them, ever in fact sold by them, the said D. M. Osborne & Co., to others, or in any wise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component or necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last abave-mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them, any commercial value whatever, independent of or greater than the materials from which they are made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said assessor, and also at the time they, the said D. M. Osborne & Co., paid said last above-mentioned assessment or tax of $346 80, to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid when said assessment was so as aforesaid wrongfully made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them liable to such assessment or tax as separate articles or independently, and they, these plaintiffs, at the same time protested against the assessment thereof otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant, as such assessor, wrongfully insisted upon his right to assess, and did wrongfully assess said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled them, the said D. M. Osborne & Co., to pay, and they, the said D. M. Osborne & Co., did, under such compulsion as aforesaid, pay to said col-

lector the said last above-mentioned assessment or tax of $346 80, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co ; wherefore the said plaintiff says, that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $346 80, ~~for which, with interest~~ thereon from the said 30th day of December, 1865, the said plaintiffs, as such survivors, as aforesaid, bring this suit, &c.

41 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of December, one thousand eight hundred and sixty-five, made castings of iron exceeding ten pounds weight for each casting, of the aggregate weight of 36 tons.

And whereas the said last above mentioned castings of iron were in the month of January, one thousand eight hundred and sixty-six, wrongfully assessed by the said defendant, as such assessor of internal revenue for said district, at the rate of three dollars and sixty cents per ton, amounting in the aggregate of tax thus assessed thereon by said assessor to the sum of $129 60; he the said defendant, as such assessor as aforesaid, wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount.

And whereas said assessment was wrongfully returned by said defendant, as such assessor as aforesaid, to the collector of said 24th collection district, whereby it became the duty of said collector to proceed and collect said monies so wrongfully assessed by said defendant, as such assessor as aforesaid, to said firm of D. M. Osborne & Co., of them, the said D. M. Osborne & Co., and thereupon he, the said collector demanded of them, the said D. M. Osborne & Co., the payment of the said last-mentioned sum of $129 60, so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he, the said collector, was, in discharge of his duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said D. M. Osborne & Co. were liable to the payment thereof, as manufacturers of said last above-mentioned castings of iron; and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector as aforesaid, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment and tax, upon and from the property of them, the said D. M. Osborne & Co. and thereupon, and under the circumstances last above-mentioned, and under the objections and protest hereinafter, in that behalf stated, to wit, at the said city of Auburn, in said 24th collection district, on the 31st day of January, one thousand eight hundred and sixty six, they, the said D. M. Osborne &

Co., paid to said collector, and said collector then and there wrongfully collected of them, the said D. M. Osborne & Co., the said last-mentioned sum of $129 60, being the amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid, upon said last-mentioned castings of iron, so as aforesaid made by them, the said D. M. Osborne & Co., during the said month of December, one thousand eight hundred and sixty-five.

And the said plaintiffs in fact say that said last-mentioned castings of iron were, and each and every one of them was, made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be, nor were they, or any of them, ever in fact sold by them, the said D. D. M. Osborne & Co., to others, or in anywise used or appropriated by them, nor were they, or any of them intended to be sold, used or appropriated by them to or for any other use or purpose than as component or necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last-above mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles, nor had they, nor had any or either of them any commercial value whatever independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And said plaintiffs in fact further say, that at the time the said last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said assessor, and also at the time they, the said D. M. Osborne & Co , paid said last above-mentioned assessment or tax of $129 60 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid when said assessment was so as aforesaid wrongfully made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them, liable to such assessment or tax as separate articles or independently, and they, these plaintiffs, at the same time protested against the assessment thereof otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant, as such assessor, wrongfully insisted upon his right to assess, and did wrongfully assess, said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled them, the said D. M. Osborne & Co., to pay, and they, the said D. M. Osborne & Co., did, under such compulsion as aforesaid, pay to said collector the said last above-mentioned assessment or tax of $129 60, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiff says, that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $129 60, for which, with interest thereon from the said 31st day of January, 1866, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

42 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of January, one thousand eight hundred and sixty-six, made castings of iron exceeding ten pounds weight for each casting, of the aggregate weight of $29\frac{3}{4}$ tons.

And whereas the said last above-mentioned castings of iron were, in the month of February, one thousand eight hundred and sixty-six, wrongfully assessed by the said defendant as such assessor of internal revenue for said district, at the rate of three dollars and sixty cents per ton, amounting in the aggregate of tax thus assessed thereon by said assessor to the sum of $107 10; he the said defendant, as such assessor as aforesaid, wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount.

And whereas said assessment was wrongfully returned by said defendant, as such assessor as aforesaid, to the collector of said 24th collection district, whereby it became the duty of said collector to proceed and collect said monies so wrongfully assessed by said defendant, as such assessor as aforesaid, to said firm of D. M. Osborne & Co., of them, the said D. M. Osborne & Co.; and thereupon he, the said collector, demanded of them, the said D. M. Osborne & Co., the payment of the said last-mentioned sum of $107 10, so as last aforesaid wrongfully assessed upon said last above mentioned castings of iron, claiming and insisting that he, the said collector, was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said D. M. Osborne & Co., were liable to the payment thereof as manufacturers of said last above-mentioned castings of iron, and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector as aforesaid, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment and tax upon and from the prop-

erty of them, the said D. M. Osborne & Co.; and thereupon and under the circumstances last above-mentioned and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 28th day of February, one thousand eight hundred and sixty-six, they, the said D. M. Osborne & Co., paid to said collector, and said collector then and there wrongfully collected of them, the said D. M. Osborne & Co., the said last mentioned sum of $107 10, being the amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid upon said last mentioned castings of iron so as aforesaid made by them, the said D. M. Osborne & Co., during the said month of January, one thousand eight hundred and sixty-six.

And the said plaintiffs in fact say that said last-mentioned castings of iron were, and each and every one of them was, made by the said D. M. Osborne & Co. in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be, nor were they or any of them ever in fact, sold by them, the said D. M. Osborne & Co., to others, or in anywise used or appropriated by them, nor were they or any of them intended to be sold, used or appropriated by them to or for any other use or purpose than as component or necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiff in fact further say, that said last above-mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles, nor had they, nor had any or either of them, any commercial value whatever independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made consisted in their adaptation for use in and as component parts of the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And said plaintiffs in fact further say, that at the time the said last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said assessor, and also at the time they, the said D. M. Osborne & Co., paid said last above mentioned assessment or tax of $107 10 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid when said assessment was so as aforesaid wrongfully made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them, liable to such assessment or tax as separate articles or independently, and they, these plaintiffs, at the same time protested against the assessment

thereof otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant, as such assessor, wrongfully insisted upon his right to assess, and did wrongfully assess, said last above-mentioned castings of iron separately from said machines and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co, of, and wrongfully compelled them, the said D. M. Osborne & Co., to pay, and they, the said D. M. Osborne & Co., did, under such compulsion as aforesaid, pay to said collector the said last above-mentioned assessment or tax of $107 10, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiff says that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $107 10, for which, with interest thereon from the said 28th day of February, 1866, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

43 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of February, one thousand eight hundred and sixty-six, made castings of iron exceeding ten pounds weight for each casting, of the aggregate weight of 66$\frac{3}{5}$ tons.

And whereas the said last above-mentioned castings of iron were in the month of March, one thousand eight hundred and sixty-six, wrongfully assessed by the said defendant, as such assessor of internal revenue for said district, at the rate of three dollars and sixty cents per ton, amounting in the aggregate of tax thus assessed thereon by said assessor to the sum of $239 76; he the said defendant, as such assessor as aforesaid, wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron and to be compelled to pay thereon a tax at that rate and to that amount.

And whereas said assessment was wrongfully returned by said defendant, as such assessor as aforesaid, to the collector of said 24th collection district, whereby it became the duty of said collector to proceed and collect said monies so wrongfully assessed by said defendant as such assessor as aforesaid to said firm of D. M. Osborne & Co., of them, the said D. M. Osborne & Co., and thereupon he, the said collector demanded of them, the said D. M. Osborne & Co., the payment of the said last-mentioned sum of $239 76, so as last aforesaid wrongfully assessed upon last above-mentioned castings of iron, claiming and insisting that he, the said collector, was in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said D. M. Osborne & Co., were liable to the payment thereof,

as manufacturers of said last above-mentioned castings of iron; and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector as aforesaid, would levy and collect the same, together with the penalties, costs and expenses as provided by law in cases of refusal to pay a legal and proper assessment tax upon and from the property of them, the said M. D. Osborne & Co.; and thereupon and under the circumstances last above-mentioned, and under the objections and protest hereinafter, in that behalf stated, to wit, at the city of Auburn, in the said 24th collection district, on the 31st day of March, one thousand eight hundred and sixty-six, they, the said D. M. Osborne & Co., paid to said collector, and said collector then and there wrongfully collected of them, the said D. M. Osborne & Co., the said last-mentioned sum of $239 76 wrongfully assessed, by said defendant as such assessor as aforesaid, upon said last-mentioned castings of iron, so as aforesaid made by them, the said D. M. Osborne & Co., during the said month of February, one thousand eight hundred and sixty-six.

And the said plaintiffs in fact say that the last-mentioned castings of iron were, and each and every one of them was, made by the said D. M. Osborne and Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be, nor were they or any of them, ever in fact, sold by them, the said D. M. Osborne & Co., to others, or in anywise used or appropriated by them, nor were they or any of them intended to be sold, used or appropriated by them, to or for any other use or purpose than as component or necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that the said last above-mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them, any commercial value whatever independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine; but on the contrary thereof, the whole value of said last above-mentioned castings of iron when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said assessor, and also at the time they, the said D. M. Osborne & Co., paid said last above-mentioned assessment or tax of $239 76 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid

when said assessment was so as aforesaid wrongfully made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them liable to such assessment or tax as separate articles or independently, and they, these plaintiffs, at the same time protested against the assessment thereof otherwise than as forming necessary and component parts of said machines when finished and ready for sale; but said defendant as such assessor wrongfully insisted upon his right to assess, and did wrongfully assess said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof, as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled them, the said D. M. Osborne & Co., to pay, and they, the said D. M. Osborne & Co., did, under such compulsion as aforesaid, pay to said collector the said last above-mentioned assessment or tax of $239 76, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiff says that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $239 76 for which, with interest thereon from the said 31st day of March, 1866, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

41 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers known as the Kirby Harvester and Mower, at their said manufacturing establishment in the city of Auburn, and within the said 24th collection district of the State of New York, in and during the month of March, one thousand eight hundred and sixty-six, made castings of iron exceeding ten pounds weight for each casting, of the aggregate weight of 128 tons.

And whereas the said last above-mentioned castings of iron were in the month of April, one thousand eight hundred and sixty-six, wrongfully assessed by the said defendant, as such assessor of internal revenue for said district, at the rate of three dollars and sixty cents per ton, amounting in the aggregate of tax thus assessed thereon by said assessor to the sum of $460 80; he, the said defendant, as such assessor as aforesaid, wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount.

And whereas said assessment was wrongfully returned by said defendant, as such assessor as aforesaid, to the collector of said 24th collection district, whereby it became the duty of said collector to proceed and collect said monies so wrongfully assessed by said defendant, as such assessor as aforesaid, to said firm of D. M. Osborne & Co., of them, the said D. M. Osborne & Co., and thereupon he, the said collector, demanded of them, the said D. M. Osborne & Co., the payment of the said last-mentioned sum of $460 80, so as last

aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he, the said collector, was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said D. M. Osborne & Co., were liable to the payment thereof as manufacturers of said last above-mentioned castings of iron, and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector as aforesaid, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment and tax, upon and from the property of them, the said D. M. Osborne & Co., and thereupon and under the circumstances last above-mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 1st day of May, one thousand eight hundred and sixty-six, they, the said D. M. Osborne & Co., paid to said collector, and said collector then and there wrongfully collected of them, the said D. M. Osborne & Co., the said last-mentioned sum of $460 80 being, the amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid, upon said last-mentioned castings of iron, so as aforesaid made by them, the said D. M. Osborne & Co., during the said month of March, one thousand eight hundred and sixty-six.

And the said plaintiffs in fact say that said last mentioned castings of iron were, and each and every one of them was made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be, nor were they, or any of them, ever in fact, sold by them, the said D. M. Osborne & Co., to others, or in anywise used or appropriated by them nor were they or any of them intended to be sold, used or appropriated by them to or for any other use or purpose than as component or necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above-mentioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them, any commercial value whatever independent of or greater than the materials from which they were made, except to be finished and fitted for use, as component parts of said particular machine. But on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last

above-mentioned castings of iron were so as aforesaid wrongfully assessed by said assessor, and also at the time they, the said D. M. Osborne & Co., paid said last above-mentioned assessment or tax of $460 80 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid when said assessment was so as aforesaid wrongfully made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them liable to such assessment or tax as separate articles or independently, and they, these plaintiffs, at the same time protested against the assessment thereof otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant as such assessor wrongfully insisted upon his right to assess, and did wrongfully assess said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof, as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled them, the said D. M. Osborne & Co., to pay, and they, the said D. M. Osborne & Co., did, under such compulsion as aforesaid, pay to said collector the said last above-mentioned assessment or tax of $460 80, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiffs says, that the said firm of D. M. Osborne & Co. was injured, and sustained damages to the amount of the said sum of $460 80 for which, with interest thereon from the said 1st day of May, 1866, the said plaintiffs, as said survivors as aforesaid brings this suit, &c.

45 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of April, one thousand eight hundred and sixty-six, made castings of iron exceeding ten pounds weight for each casting, of the aggregate weight of 125 tons.

And whereas the said last above-mentioned castings of iron were in the month of May, one thousand eight hundred and sixty , wrongfully assessed by the said defendant, as such assessor of internal revenue for said district, at the rate of three dollars and sixty cents per ton, amounting in the aggregate of tax thus assessed thereon by said assessor to the sum of $450, he, the said defendant, as such assessor as aforesaid, wrongfully and illegally claiming and insisting that said firm of D. M. Osborne & Co. was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount.

And whereas said assessment was wrongfully returned by said defendant, as such assessor as aforesaid, to the collector of said 24th collection district, whereby it became the duty of said collector to

proceed and collect said monies so wrongfully assessed by said defendant as such assessor as aforesaid to said firm of D. M. Osborne & Co., of them, the said D. M. Osborne & Co., and thereupon he, the said collector, demanded of them, the said D. M. Osborne & Co., the payment of the said last-mentioned sum of $450, so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he, the said collector, was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said D. M. Osborne & Co., were liable to the payment thereof, as manufacturers of said last above-mentioned castings of iron ; and threatening, in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector as aforesaid, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment and tax, upon and from the property of them, the said D. M Osborne & Co.; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter, in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 30th day of May, one thousand eight hundred and sixty-six, they, the said D. M. Osborne & Co., paid to said collector, and said collector then and there wrongfully collected of them, the said D. M. Osborne & Co., the said last-mentioned sum of $450, being the amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid upon said last mentioned castings of iron, so as aforesaid made by them, the said D. M. Osborne & Co., during the said month of April, one thousand eight hundred and sixty-six.

And the said plaintiffs in fact say that said last-mentioned castings of iron were, and each and every one of them was, made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be, nor were they or any of them ever in fact sold by them, the said D. M. Osborne & Co., to others, or in anywise used or appropriated by them, nor were they or any of them intended to be sold, used or appropriated by them to or for any other use or purpose than as component or necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles ; nor had they, nor had any or either of them, any commercial value whatever independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine ; but on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and

fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And said plaintiffs in fact further say, that at the time the said last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said assessor, and also at the time they, the said D. M. Osborne & Co., paid said last above-mentioned assessment or tax of $450 to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid when said assessment was so as aforesaid wrongfully made, as also to said collector when said last above-mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them, liable to such assessment or tax as separate articles or independently; and they, these plaintiffs, at the same time protested against the assessment thereof otherwise than as forming necessary and component parts of said machines when finished and ready for sale. But said defendant as such assessor wrongfully insisted upon his right to assess, and did wrongfully assess said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof as component parts of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled them, the said D. M. Osborne & Co., to pay, and they, the said D. M. Osborne & Co., did, under such compulsion as aforesaid, pay to said collector the said last above-mentioned assessment or tax of $450, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiff says, that the said firm of D. M. Osborne & Co. was injured, and sustained damages to the amount of the said sum of $450, for which, with interest thereon from the said 30th day of May, 1866, the said plaintiffs, as survivors as aforesaid, bring this suit, &c.

46 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of May, one thousand eight hundred and sixty-six, made castings of iron exceeding ten pounds weight for each casting, to the aggregate weight of $128\frac{1}{3}$ tons.

And whereas the said last above-mentioned castings of iron, were in the month of June, one thousand eight hundred and sixty-six, wrongfully assessed by the said defendant, as such assessor of internal revenue for said district, at the rate of three dollars and sixty cents per ton, amounting in the aggregate of tax thus assessed thereon by said assessor to the sum of $462; he the said defendant, as such assessor as aforesaid, wrongfully and illegally claiming and insisting

that the said firm of D. M. Osborne & Co., was liable to be assessed upon said last above-mentioned castings of iron, and to be compelled to pay thereon a tax at that rate and to that amount.

And whereas said assessment was wrongfully returned by said defendant, as such assessor as aforesaid, to the collector of said 24th collection district, whereby it became the duty of said collector to proceed and collect said monies so wrongfully assessed by said defendant as such assessor as aforesaid to said firm of D. M. Osborne & Co., of them, the said D. M. Osborne & Co., and thereupon he the said collector demanded of them, the said D. M. Osborne & Co., the payment of the said last mentioned sum of $462, so as last aforesaid wrongfully assessed upon said last above-mentioned castings of iron, claiming and insisting that he the said collector was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that they, the said D. M. Osborne & Co., were liable to the payment thereof as manufacturers of said last above-mentioned castings of iron; and threatening in case payment thereof should be refused by the said D. M. Osborne & Co., that then he, the said collector as aforesaid, would levy and collect the same together with the penalties, costs, and expenses, as provided by law in cases of refusal to pay a legal and proper assessment and tax, upon and from the property of them, the said D. M. Osborne & Co.; and thereupon and under the circumstances last above-mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the said city of Auburn, in the said 24th collection district, on the 2nd day of July, one thousand eight hundred and sixty-six, they, the said D. M. Osborne & Co., paid to said collector, and said collector then and there wrongfully collected of them, the said D. M. Osborne & Co., the last-mentioned sum of $462, being the amount so as aforesaid wrongfully assessed by said defendant, as such assessor as aforesaid, upon said last-mentioned castings of iron so as aforesaid made by them, the said D. M. Osborne & Co., during the said month of May, one thousand eight hundred and sixty-six.

And the said plaintiffs in fact say that said last-mentioned castings of iron were, and each and every one of them was made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them nor any part thereof, intended to be, nor were they or any of them ever in fact, sold by them, the said D. M. Osborne & Co., to others, or in anywise used or appropriated by them, nor were they or any of them intended to be sold, used or appropriated by them, to or for any other use or purpose than as component or necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, the said D. M. Osborne & Co., for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above-mentioned castings of iron were not, nor were any of them known to

dealers in the trade of such or similar articles; nor had they, nor had any or either of them, any commercial value whatever independent of or greater than the materials from which they were made, except to be finished and fitted for use, as component parts of said particular machine. But on the contrary thereof, the whole value of said last above-mentioned castings of iron when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in and as component parts of the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And said plaintiffs in fact further say that at the time the said last above-mentioned castings of iron were so as aforesaid wrongfully assessed by said assessor, and also at the time they, the said D. M. Osborne & Co., paid said last above-mentioned assessment or tax of $462, to said collector as aforesaid, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid when said assessment was so as aforesaid wrongfully made, as also to said collector when said last above mentioned tax was so as aforesaid paid to and collected by him, that said last above-mentioned castings of iron were not, nor were any of them, liable to such assessment or tax as separate articles or independently, and they, these plaintiffs, at the same time protested against the assessment thereof otherwise than as forming necessary and component parts of said machines when finished and ready for sale; but said defendant, as such assessor, wrongfully insisted upon his right to assess, and did wrongfully assess, said last above-mentioned castings of iron separately from said machines, and as finished and manufactured articles, and independently of the intended use thereof as component part of said machines.

And said collector wrongfully insisted upon the payment by them, the said D. M. Osborne & Co., of, and wrongfully compelled them, the said D. M. Osborne Co., to pay, and they, the said D. M. Osborne & Co., did, under such compulsion as aforesaid pay, to said collector the said last above-mentioned assessment or tax of $462, notwithstanding the said objections and protest of them, the said D. M. Osborne & Co.; wherefore the said plaintiff says that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of the said sum of $462, for which, with interest thereon from the said 2d day of July, 1866, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

47 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, previous to, in and during the month of March, 186–, sold and disposed of finished machines of the aggregate value of $3,725 80.

And whereas the said last above-mentioned machines were in the month of April, 1865, wrongfully assessed by the said defendant, as such assessor of internal revenue as aforesaid, at the rate of five per cent. upon the whole of the said aggregate value thereof, amounting

in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $186 29.

And whereas said assessment was wrongfully returned by said defendant, as such assessor, to the said collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid. of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said firm of D. M. Osborne & Co. the payment of the whole of said last mentioned sum of $186 29 so as last aforesaid wrongfully assessed upon said last above-mentioned finished machines, he, the said collector, claiming and insisting that he was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that the said firm of D. M. Osborne & Co. was liable to the payment of the whole thereof as manufacturers for sale of said last above-mentioned finished machines; and threatening, in case payment of the whole thereof, or of any part thereof, should be refused by said firm, that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of said firm; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the city of Auburn, in the said 24th collection district, on the 29th day of April, 1865, the said firm of D. M. Osborne & Co. paid to the said collector, and said collector then and there compelled the said firm to pay him, as such collector as aforesaid, and under and in virtue of said wrongful assessment and return, the whole of the said last above-mentioned sum of $186 29, being the whole amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid, upon the full value of said finished machines so as aforesaid sold by the said firm of D. M. Osborne & Co. during the said month of March, 1865, without making, and wrongfully refusing to make, any deductions whatever for the causes hereinafter more particularly stated.

And the said plaintiffs in fact say that castings of iron exceeding ten pounds in weight for each casting formed large proportions of the necessary and component parts, to wit, to the extent of one-eighth part in value, of the said last above-mentioned finished machines: and castings of iron of ten pounds in weight or less in each casting, formed other large portions of the other component parts of the said last above-mentioned finished machines, to wit, to the extent of one-twentieth part of the whole value thereof.

And said plaintiffs in fact further say that all of said castings of iron were made by the said firm of D. M. Osborne & Co. at their manufacturing establishment in the said city of Auburn, and all of said castings of iron had been, previous to said month of March, 1865, assessed by the said defendant as such assessor as aforesaid to

the said firm of D. M. Osborne & Co., to wit, those exceeding ten pounds in weight for each casting at the rate of $3 per ton upon the aggregate weight thereof, and those of ten pounds or less in weight, for each casting at the rate of five per cent. ad valorem upon the aggregate valne thereof; and said assessment had, before the said month of April, 1865, been fully paid by the said firm of D. M. Osborne & Co. to the said collector of said 24th district.

And the said plaintiffs in fact further say that said castings of iron, in this count mentioned were, and each and every one of them was, made by the said D. M. Osborne & Co., in and at their said mannfacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they or any of them ever in fact, sold by the said D. M. Osborne & Co. to others, or in anywise used or appropriated by them, nor were they nor any of them intended to be sold, used or appropriated by them, to or for any use or other purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them for sale as complete and finished machines.

And the said plaintiffs in fact further say that said last above-mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles, nor had they, nor had any or either of them, any commercial value whatever independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And the said plaintiffs in fact further say that each and every of the said castings of iron, in this count above mentioned, was increased in value, after the same was made and before the same was used as a component and necessary part of said finished machines, by being polished or varnished, or oiled, ground, pressed, trimmed, or ornamented, or otherwise more completely finished and fitted for use, and without changing the original character thereof, or the purpose for which the same were severally intended to be used.

And said plaintiffs in fact further say that at the time the said last above-mentioned finished machines which had been so as aforesaid manufactured and sold by the said D. M. Osborne & Co. were so as aforesaid assessed by said defendant as such assessor as aforesaid, and also at the time said firm paid said assessment or tax of $186 29 thereon to said collector, they, the said D. M. Osborne & Co., insisted as well to said defendant as such assessor as aforesaid as also to said collector, that the tax to be assessed, levied, and collected thereon should be ascertained by deducting, from the amount produced by assessing the same at the rate of 5 per cent. ad valorem

upon the whole value thereof, the amount of the taxes which had been so as aforesaid assessed, levied, and collected from the said D. M. Osborne & Co., upon the said castings of iron in this count
48 above mentioned, and which so as aforesaid formed necessary and component parts thereof; but said defendant, as such assessor as aforesaid, wrongfully insisted upon assessing, and did wrongfully assess, said finished machines, in this count above mentioned, at the full value thereof, without making, and refusing to make, any deduction whatever for the taxes so as aforesaid theretofore assessed, levied and collected upon said necessary and component parts thereof, and he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claimed and insisted that said firm of D. M. Osborne & Co. was liable to be thus assessed thereon, and he then and there wrongfully and illegally returned said assessment to the said collector of said 24th district; whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant, as such assessor as aforesaid, of the said firm of D. M. Osborne & Co.; and thereupon he, the said collector, demanded of the said firm the payment of the whole of said last above-mentioned tax of $186 29, claiming and insisting that he, the said collector, was, in discharge of his official duty, bound to collect the same and the whole thereof upon and in virtue of said assessment and return without any deduction whatever; and said firm was, by said collector compelled to, and they did under such compulsion and on the 29th day of April, 1865, pay to him the said collector the whole of said assessment of $186 29, notwithstanding the said objections and protest of the said firm; wherefore the said plaintiffs say that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of $186 29, for which, with interest thereon from the said 29th day of April, 1865, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

49 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of April, 1865, sold and disposed of finished machines of the aggregate value of $479 71.

And whereas the said last above-mentioned machines were in the month of May, 1865, wrongfully assessed by the said defendant as such assessor of internal revenue as aforesaid, at the rate of six per cent. upon the whole of the said aggregate value thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $28 78.

And whereas said assessment was wrongfully returned by said defendant, as such assessor, to the said collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the

said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said firm of D. M. Osborne & Co. the payment of the whole of said last mentioned sum of $28 78, so as last aforesaid wrongfully assessed upon said last above mentioned finished machines, he, the said collector, claiming and insisting that he was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that the said firm of D. M. Osborne & Co. was liable to the payment of the whole thereof as manufacturers for sale of said last above mentioned finished machines; and threatening, in case payment of the whole thereof, or of any part thereof, should be refused by said firm, that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of said firm; and thereupon and under the circumstances last above-mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the city of Auburn, in the said 24th collection district, on the 31st day of May, 1865, the said firm of D. M. Osborne & Co. paid to the said collector, and said collector then and there compelled the said firm to pay to him, as such collector as aforesaid, and under and in virtue of said wrongful assessment and return, the whole of the said last above mentioned sum of $28 78, being the whole amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid, upon the full value of said finished machines so as aforesaid sold by the said firm of D. M. Osborne & Co. during the said month of April, 1865, without making, and wrongfully refusing to make, any deductions whatever for the causes hereinafter more particularly stated.

And the said plaintiffs in fact say that castings of iron exceeding ten pounds in weight for each casting formed large portions of the necessary and component parts, to wit, to the extent of one-eighth part in value of the said last above-mentioned finished machines; and castings of iron of ten pounds in weight, or less, of each casting, formed other large portions of the other component parts of the said last above-mentioned finished machines, to wit, to the extent of one-twentieth part of the whole value thereof.

And said plaintiffs in fact further say that all of said castings of iron were made by the said firm of D. M. Osborne & Co. at their said manufacturing establishment in the said city of Auburn, and all of said castings of iron had been, previous to said month of April, 1865, assessed by the said defendant as such assessor as aforesaid, to the said firm of D. M. Osborne & Co., to wit, those exceeding ten pounds in weight for each casting, at the rate of $3 per ton upon the aggregate weight thereof; and those of ten pounds or less in weight for each casting, at the rate of five per cent. ad valorem upon the aggregate value thereof; and said assessment had, before the said month of May, 1865, been fully paid by said firm of D. M. Osborne & Co. to the said collector of said 24th district.

And the said plaintiffs in fact further say that said castings of iron in this count mentioned were, and each and every one of them was, made by the said D. M. Osborne & Co. in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they or any of them ever in fact sold by the said D. M. Osborne & Co. to others, or in anywise used or appropriated by them, nor were they or any of them intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them for sale as complete and finished machines.

And the said plaintiffs in fact further say that said last above-mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles, nor had they, nor had any or either of them, any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And the said plaintiffs in fact further say, that each and every of the said castings of iron in this count above-mentioned was increased in value after the same was made, and before the same was used as a component and necessary part of said finished machines, by being polished or varnished, or oiled, ground, pressed, trimmed, ornamented, or otherwise more completely finished and fitted for use, and without changing the original character thereof, or the purpose for which the same were severally intended to be used.

And said plaintiffs in fact further say that at the time the said last above-mentioned finished machines, which had been so as aforesaid manufactured and sold by the said D. M. Osborne & Co., were so as aforesaid assessed by said defendant as such assessor as aforesaid, and also at the time said firm paid said assessment or tax of $28 78 thereon to said collector, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid, as also to said collector, that the tax to be assessed, levied and collected thereon, should be ascertained by deducting from the amount produced, by assessing the same at the rate of six per cent. ad valorem upon the whole value thereof, the amount of the taxes which had been so as aforesaid assessed, levied, and collected from the said D.

M. Osborne & Co., upon the said castings of iron in this count
50 above-mentioned, and which so as aforesaid formed necessary and component parts thereof; but said defendant, as such assessor as aforesaid, wrongfully insisted upon assessing, and did wrongfully assess, said finished machines in this count above men-

tioned at the full value thereof, without making, and refusing to make, any deduction whatever for the taxes so as aforesaid theretofore assessed, levied and collected upon said necessary and component parts thereof; and he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claimed and insisted that said firm of D. M. Osborne & Co. was liable to be thus assessed thereon; and he then and there wrongfully and illegally returned said assessment to the said collector of said 24th district, whereupon it became the official duty of said collector to proceed and collect said monies, so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co.; and thereupon he, the said collector, demanded of the said firm the payment of the whole of said last above-mentioned tax of $28 78, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same and the whole thereof, upon and in virtue of said assessment and return, without any deduction whatever; and said firm was by said collector compelled to, and they did, under such compulsion, and on the 31st day of May, 1865, pay to him, the said collector, the whole of said assessment of $28 78, notwithstanding the said objections and protest of the said firm; wherefore the said plaintiffs say, that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of $28 78. for which, with interest thereon from the said 31st day of May, 1865, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

51 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of May, 1865, sold and disposed of finished machines of the aggregate value of $912 69.

And whereas the said last above mentioned machines were in the month of June, 1865, wrongfully assessed by the said defendant as such assessor of internal revenue as aforesaid, at the rate of six per cent. upon the whole of the said aggregate value thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $54 76.

And whereas said assessment was wrongfully returned by said defendant, as such assessor to the said collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said firm of D. M. Osborne & Co. the payment of the whole of said last mentioned sum of $54 76, so as last aforesaid wrongfully assessed upon said last above mentioned finished machines, he, the said collector, claiming and insisting that he was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully

made and returned to him by said defendant as such assessor as aforesaid, and that the said firm of D. M. Osborne & Co. was liable to the payment of the whole thereof, as manufacturers for sale of said last above mentioned finished machines; and threatening in case payment of the whole thereof or of any part thereof should be refused by said firm, that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of said firm; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the city of Auburn, in the said 24th collection district, on the 30th day of June, 1865, the said firm of D. M. Osborne & Co. paid to the said collector, and said collector then and there compelled the said firm to pay to him, as such collector as aforesaid, and under and in virtue of said wrongful assessment and return, the whole of the said last above mentioned sum of $54 76, being the whole amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid, upon the full value of said finished machines so as aforesaid sold by the said firm of D. M. Osborne & Co., during the said month of May, 1865, without making, and wrongfully refusing to make any deductions whatever, for the causes hereinafter more particularly stated.

And the said plaintiffs in fact say, that castings of iron, exceeding ten pounds in weight for each casting, formed large portions of the necessary and component parts, to wit, to the extent of one-eighth part in value of the said last above mentioned finished machines; and castings of iron of ten pounds in weight, or less, of each casting, formed other large portions of the other component parts of the said last above mentioned finished machines, to wit, to the extent of one-twentieth part of the whole value thereof.

And said plaintiffs in fact further say, that all of said castings of iron were made by the said firm of D. M. Osborne & Co., at their said manufacturing establishment in the said city of Auburn; and all of said castings of iron had been, previous to said month of June, 1865, assessed by the said defendant as such assessor as aforesaid, to the said firm of D. M. Osborne & Co., to wit, those exceeding ten pounds in weight for each casting at the rate of $3 60 per ton upon the aggregate weight thereof; and those of ten pounds or less in weight, for each casting at the rate of six per cent. ad valorem, upon the aggregate value thereof; and said assessment had, before the said month of June, 1865. been fully paid by said firm of D. M. Osborne & Co. to the said collector of said 24th district.

And the said plaintiffs in fact further say that said castings of iron, in this count mentioned, were, and each and every one of them was made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they, or any of them, ever in fact, sold by

the said D. M. Osborne & Co. to others, or in any wise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And the said plaintiffs in fact further say, that each and every of the said castings of iron in this count above mentioned was increased in value after the same was made, and before the same was used as a component and necessary part of said finished machines, by being polished or varnished, or oiled, ground, pressed, trimmed, ornamented, or otherwise more completely finished and fitted for use, and without changing the original character thereof, or the purpose for which the same were severally intended to be used.

And said plaintiffs in fact further say that at the time the said last above mentioned finished machines, which had been so as aforesaid manufactured and sold by the said D. M. Osborne & Co., were so as aforesaid assessed by said defendant, as such assessor as aforesaid; and also at the time said firm paid said assessment or tax of $54 75 thereon to said collector, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid, as also to said collector, that the tax to be assessed, levied and collected thereon should be ascertained by deducting from the amount produced, by assessing the same at the rate of six per cent. ad valorem upon the whole value thereof, the amount of the taxes which had been so as aforesaid assessed, levied, and collected from the
52 said D. M. Osborne & Co., upon the said castings of iron in this count above mentioned, and which so as aforesaid formed necessary and component parts thereof. But said defendant as such assessor as aforesaid wrongfully insisted upon assessing and did wrongfully assess said finished machines, in this count above mentioned, at the full value thereof, without making, and refusing to make any deduction whatever for the taxes so as aforesaid theretofore assessed, levied and collected upon said necessary and component parts thereof, and he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claimed and insisted that said firm of D. M. Osborne & Co. was liable to be thus assessed thereon; and he, then and there, wrongfully and illegally returned

said assessment to the said collector of said 24th district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co.; and thereupon he, the said collector, demanded of the said firm the payment of the whole of said last above mentioned tax of $54 76, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same and the whole thereof, upon and in virtue of said assessment and return, without any deduction whatever; and said firm was, by said collector, compelled to, and they did, under such compulsion, and on the 30th day of June, 1865, pay to him, the said collector, the whole of said assessment of $54 76, notwithstanding the said objections and protest of the said firm; wherefore the said plaintiffs say, that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of $54 76, for which, with interest thereon from the said 30th day of June, 1865, the said plaintiffs as such survivors as aforesaid bring this suit, &c.

53 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of June, 1865, sold and disposed of finished machines of the aggregate value of $3,188 67.

And whereas the said last above-mentioned machines were, in the month of July, 1865, wrongfully assessed by the said defendant, as such assessor of internal revenue as aforesaid, at the rate of six per cent. upon the whole of the said aggregate value thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant, as such assessor, to the sum of $191 32.

And whereas said assessment was wrongfully returned by said defendant, as such assessor, to the said collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant, as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said firm of D. M. Osborne & Co. the payment of the whole of said last-mentioned sum of $191 32 so as last aforesaid wrongfully assessed upon said last above-mentioned finished machines, he, the said collector, claiming and insisting that he was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return so as aforesaid wrongfully made and returned to him by said defendant, as such assessor as aforesaid, and that the said firm of D. M. Osborne & Co. was liable to the payment of the whole thereof, as manufacturers for sale of said last above-mentioned finished machines; and threatening, in case payment of the whole thereof, or of any part thereof, should be refused by said firm, that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by

law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of said firm; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the city of Auburn, in the said 24th collection district, on the 20th day of July, 1865, the said firm of D. M. Osborne & Co. paid to the said collector, and said collector then and there compelled the said firm to pay to him, as such collector as aforesaid, and under and in virtue of said wrongful assessment and return, the whole of the said last above-mentioned sum of $191 32, being the whole amount so as aforesaid wrongfully assessed by said defendant, as such assessor as aforesaid, upon the full value of said finished machines so as aforesaid sold by the said firm of D. M. Osborne & Co. during the said month of June, 1865, without making, and wrongfully refusing to make, any deduction whatever, for the causes hereinafter more particularly stated.

And the said plaintiffs in fact say that castings of iron, exceeding ten pounds in weight for each casting, formed large portions of the necessary and component parts, to wit, to the extent of one-eighth part in value of the said last above-mentioned finished machines; and castings of iron of ten pounds in weight, or less, of each casting, formed other large portions of the other component parts of the said last above-mentioned finished machines, to wit, to the extent of one-twentieth part of the whole value thereof.

And said plaintiffs in fact further say that all of said castings of iron were made by the said firm of D. M. Osborne & Co. at their said manufacturing establishment, in the said city of Auburn; and all of said castings of iron had been, previous to said month of July, 1865, assessed by the said defendant, as such assessor as aforesaid, to the said firm of D. M. Osborne & Co., to wit, those exceeding ten pounds in weight for each casting, at the rate $3 60 per ton upon the aggregate weight thereof; and those of ten pounds or less in weight, for each casting, at the rate of six per cent. ad valorem upon the aggregate value thereof; and said assessment had, before the said month of July, 1865, been fully paid by said firm of D. M. Osborne & Co. to the said collector of the said 24th district.

And the said plaintiffs in fact further say that said castings of iron in this count mentioned were, and each and every one of them was, made by the said D. M. Osborne & Co. in and at their said manufacturing establishment, in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid; and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they, or any of them, ever in fact sold by the said D. M. Osborne & Co. to others, or in anywise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines, so as aforesaid exclusively manufactured by them, for sale as complete and finished machines.

And the said plaintiffs-in-fact further say that said last above-

mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them, any commercial value whatever independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine; but on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in and component parts of the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And the said plaintiffs-in-fact further say that each and every of the said castings of iron in this count above mentioned was increased in value after the same was made, and before the same was used as a component and necessary part of said finished machines, by being polished or varnished, or oiled, ground, pressed, trimmed, ornamented, or otherwise more completely finished and fitted for use, and without changing the original character thereof or the purpose for which the same were severally intended to be used.

And said plaintiffs-in-fact further say that at the time the said last above-mentioned finished machines, which had been so as aforesaid manufactured and sold by the said D. M. Osborne & Co., were so as aforesaid assessed by said defendant, as such assessor as aforesaid; and also at the time said firm paid said assessment or tax of $191 32 thereon to said collector, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid, as also to said collector, that the tax to be assessed, levied and collected thereon should be ascertained by deducting from the amount produced, by assessing the same at the rate of six per cent. ad valorem upon the whole value thereof, the amount of the taxes which had been so as aforesaid assessed, levied and collected from the
54 said D. M. Osborne & Co. upon the said castings of iron in this count above mentioned, and which so as aforesaid formed necessary and component part thereof; but said defendant, as such assessor as aforesaid, wrongfully insisted upon assessing, and did wrongfully assess, said finished machines in this count above mentioned, at the full value thereof, without making, and refusing to make any deduction whatever for the taxes so as aforesaid theretofore assessed, levied and collected upon said necessary and component parts thereof; and he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claimed and insisted that said firm of D. M. Osborne & Co. was liable to be thus assessed thereon, and he, then and there, wrongfully and illegally returned said assessment to the said collector of said 24th district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant, as such assessor as aforesaid, of the said firm of D. M. Osborne & Co.; and thereupon he, the said collector, demanded of the said firm the payment of the whole of said last above-mentioned tax of $191 32, claiming and insisting that he, the said collector, was

in discharge of his official duty, bound to collect the same and the whole thereof, upon and in virtue of said assessment and return, without any deduction whatever; and said firm was by said collector compelled to, and they did under such compulsion, and on the 20th day of July, 1865, pay to him, the said collector, the whole of said assessment of $191 32, notwithstanding the said objections and protest of the said firm; wherefore the said plaintiffs say that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of $191 32, for which, with interest thereon from the said 20th day of July, 1865, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

55 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection of the said State of New York, in and during the month of July and August, 1865, sold and disposed of finished machines of the aggregate value of $85,743.

And whereas the said last above mentioned machines were in the month of September, 1865, wrongfully assessed by the said defendant as such assessor of internal revenue as aforesaid, at the rate of six per cent. upon the whole of the said aggregate value thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $5,144 60.

And whereas said assessment was wrongfully returned by said defendant, as such assessor to the said collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said firm of D. M. Osborne & Co. the payment of the whole of said last mentioned sum of $5,144 60, so as last aforesaid wrongfully assessed upon said last above mentioned finished machines, he, the said collector, claiming and insisting that he was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that the said firm of D. M. Osborne & Co. was liable to the payment of the whole thereof, as manufacturers for sale of said last above mentioned finished machines; and threatening, in case payment of the whole thereof or of any part thereof should be refused by said firm, that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of said firm; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the city of Auburn, in the said 24th collection district, on the 30th day of September, 1865, the said firm of D. M. Osborne & Co. paid to the said collector, and said collector then and there compelled the said

firm to pay to him, as such collector as aforesaid, and under and in virtue of said wrongful assessment and return, the whole of the said last above mentioned sum of $5,144 60, being the whole amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid, upon the full value of said finished machines so as aforesaid sold by the said firm of D. M. Osborne & Co. during the said month of July and August, 1865, without making, and wrongfully refusing to make any deductions whatever, for the causes hereinafter more particularly stated.

And the said plaintiffs in fact say, that castings of iron, exceeding ten pounds in weight for each casting, formed large portions of the necessary and component parts, to wit, to the extent of one-eighth part in value of the said last above mentioned finished machines; and castings of iron of ten pounds in weight, or less, of each casting, formed other large portions of the other component parts of the said last above mentioned finished machines, to wit, to the extent of one-twentieth part of the whole value thereof.

And said plaintiffs in fact further say, that all of said castings of irons were made by the said firm of D. M. Osborne & Co., at their said manufacturing establishment in the said city of Auburn; and all of said castings of iron had been, previous to said month of September, 1865, assessed by the said defendant as such assessor as aforesaid, to the said firm of D. M. Osborne & Co., to wit, those exceeding ten pounds in weight for each casting, at the rate of $3 60 per ton upon the aggregate weight thereof; and those of ten pounds or less in weight, for each casting, at the rate of six per cent. ad valorem, upon the aggregate value thereof; and said assessment had, before the said month of September, 1865, been fully paid by said firm of D. M. Osborne & Co. to the said collector of said 24th district.

And the said plaintiffs in fact further say that said castings of iron, in this count mentioned, were, and each and every one of them was, made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they, or any of them, ever in fact, sold by the said D. M. Osborne & Co. to others, or in any wise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use, as component parts of said particular machine. But on the contrary thereof, the whole value of said last above mentioned castings of iron, when finished and

fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapears and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co., for sale as aforesaid.

And the said plaintiffs in fact further say, that each and every of the said castings of iron in this count above mentioned was increased in value, after the same was made, and before the same was used as a component and necessary part of said finished machines, by being polished or varnished, or oiled, ground, pressed, trimmed, ornamented, or otherwise more completely finished and fitted for use, and without changing the original character thereof, or the purpose for which the same were severally intended to be used.

And said plaintiffs in fact further say that at the time the said last above mentioned finished machines, which had been so as aforesaid manufactured and sold by the said D. M. Osborne & Co., were so as aforesaid assessed by said defendant, as such assessor as aforesaid, and also at the time said firm paid said assessment or tax of $5,144 60 thereon, to said collector, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid, as also to said collector, that the tax to be assessed, levied and collected thereon, should be ascertained by deducting from the amount produced, by assessing the same at the rate of six per cent. ad valorem upon the whole value thereof, the amount of the taxes which had been so as aforesaid assessed, levied, and collected from
56 the said D. M. Osborne & Co., upon the said castings of iron in this count above mentioned, and which so as aforesaid formed necessary und component parts thereof. But said defendant as such assessor as aforesaid wrongfully insisted upon assessing and did wrongfully assess said finished machines, in this count above mentioned, at the full value thereof, without making, and refusing to make any deduction whatever, for the taxes so as aforesaid theretofore assessed levied and collected upon said necessary and component parts thereof, and he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claimed and insisted that said firm of D. M. Osborne & Co. was liable to be thus assessed thereon; and he, then and there, wrongfully and illegally, returned said assessment to the said collector of said 24th district, whereupon it became the official duty of said collector to proceed and collect said monies, so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co.; and thereupon he, the said collector, demanded of the said firm the payment of the whole of said last above mentioned tax of $5,144 60, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same and the whole thereof, upon and in virtue of said assessment and return, without any deduction whatever; and said firm was, by said collector, compelled to, and they did, under such compulsion, and on the 30th day of September, 1865, pay to him, the said collector, the whole of said assessment of $5,144 60, notwithstanding the said objections and protest of the said firm; wherefore

the said plaintiffs say, that the said firm of D. M. Osborne & Co. was injured, and sustained damages to the amount of $5,144 60, for which, with interest thereon from the said 30th day of September, 1865, the said plaintiffs as such survivors as aforesaid bring this suit, &c.

57 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of September, 1865, sold and disposed of finished machines of the aggregate value of $31,341.

And whereas the said last above-mentioned machines were in the month of October, 1865, wrongfully assessed by the said defendant as such assessor of internal revenue as aforesaid, at the rate of six per cent. upon the whole of the said aggregate value thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $1,880 46.

And whereas said assessment was wrongfully returned by said defendant, as such assessor to the said collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said moneys so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said firm of D. M. Osborne & Co. the payment of the whole of said last-mentioned sum of $1,880 46, so as last aforesaid wrongfully assessed upon said last above-mentioned finished machines, he, the said collector claiming and insisting that he was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that the said firm of D. M. Osborne & Co. was liable to the payment of the whole thereof, as manufacturers for sale of said last above-mentioned finished machines; and threatening, in case payment of the whole thereof or of any part thereof should be refused by said firm, that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of said firm; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter, in that behalf stated, to wit, at the city of Auburn, in the said 24th collection district, on the 30th day of November, 1865, the said firm of D. M. Osborne & Co. paid to the said collector, and said collector then and there compelled the said firm to pay to him, as such collector as aforesaid, and under and in virtue of said wrongful assessment and return, the whole of the said last above-mentioned sum of $1,880 46, being the whole amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid, upon the full value of said finished machines so as aforesaid sold by the said firm of D. M. Osborne & Co., during

the said month of September, 1865, without making, and wrongfully refusing to make any deductions whatever, for the causes hereinafter more particularly stated.

And the said plaintiffs in fact say, that castings of iron exceeding ten pounds in weight for each casting formed large portions of the necessary and component parts, to wit, to the extent of one-eighth part in value of the said last above-mentioned finished machines; and castings of iron of ten pounds in weight, or less, of each casting, formed other large portions of the other component parts of the said last above-mentioned finished machines, to wit, to the extent of one-twentieth part of the whole value thereof.

And said plaintiffs in fact further say, that all of said castings of iron were made by the said firm of D. M. Osborne & Co., at their said manufacturing establishment in the said city of Auburn; and all of said castings of iron had been, previous to said month of October, 1865, assessed by the said defendant as such assessor as aforesaid to the said firm of D. M. Osborne & Co., to wit, those exceeding ten pounds in weight for each casting at the rate of $3 60 per ton upon the aggregate weight thereof; and those of ten pounds or less in weight, for each casting, at the rate of six per cent. ad valorem upon the aggregate value thereof; and said assessment had, before the said month of October, 1865, been fully paid by said firm of D. M. Osborne & Co. to the said collector of said 24th district.

And the said plaintiffs in fact further say that said castings of iron in this count mentioned were, and each and every one of them was, made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they, or any of them, ever in fact, sold by the said D. M. Osborne & Co. to others, or in anywise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above-mentioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And the said plaintiffs in fact further say, that each and every of the said castings of iron in this count above mentioned was increased in value, after the same was made, and before the same was used as a component and necessary part of said finished machines, by being polished or varnished, or oiled, ground, pressed, trimmed, ornamented, or otherwise more completely finished and fitted for use, and without changing the original character thereof, or the purpose for which the same were severally intended to be used.

And said plaintiffs in fact further say that at the time the said last above-mentioned finished machines, which had been so as aforesaid manufactured and sold by the said D. M. Osborne & Co., were so as aforesaid assessed by said defendant, as such assessor as aforesaid, and also at the time said firm paid said assessment or tax of $1,880 46 thereon to said collector, they, the said D. M. Osborne & Co., insisted, as well to said defendants as such assessor as aforesaid, as also to said collector, that the tax to be assessed, levied and collected thereon, should be ascertained by deducting from the amount produced, by assessing the same at the rate of six per cent. ad valorem upon the whole value thereof, the amount of the taxes which had been so as aforesaid assessed, levied and collected from the
58 said D. M. Osborne & Co. upon the said castings of iron in this count above mentioned, and which so as aforesaid formed necessary and component parts thereof. But said defendants as such assessor as aforesaid wrongfully insisted upon assessing and did wrongfully assess said finished machines, in this count above mentioned, at the full value thereof, without making, and refusing to make any deduction whatever, for the taxes so as aforesaid thereto fore assessed, levied and collected upon said necessary and component parts thereof, and he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claimed and insisted that said firm of D. M. Osborne & Co. was liable to be thus assessed thereon; and he, then and there, wrongfully and illegally returned said assessment to the said collector of said 24th district, whereupon it became the official duty of said collector to proceed and collect said monies, so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co.; and thereupon he, the said collector, demanded of the said firm the payment of the whole of said last above-mentioned tax of $1,880 46, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same and the whole thereof, upon and in virtue of said assessment and return, without any deduction whatever; and said firm was by said collector compelled to, and they did, under such compulsion, and on the 31st day of October, 1865, pay to him, the said collector, the whole of said assessment of $1,880 46, notwithstanding the said objections and protest of the said firm; wherefore the said plaintiffs say, that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of $1,880 46, for which, with interest thereon from the said 31st day of October, 1865, the said plaintiffs as such survivors as aforesaid bring this suit, &c.

59 And whereas also the said D. M. Osborne & Co. so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of October, 1865, sold and disposed of finished machines of the aggregate value of $27,163.

And whereas the said last above-mentioned machines were, in the month of November, 1865, wrongfully assessed by the said defendant as such assessor of internal revenue as aforesaid, at the rate of six per cent. upon the whole of the said aggregate value thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $1,629 78.

And whereas said assessment was wrongfully returned by said defendant as such assessor to the said collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said firm of D. M. Osborne & Co. the payment of the whole of said last-mentioned sum of $1,629 78 so as last aforesaid wrongfully assessed upon said last above-mentioned finished machines, he, the said collector, claiming and insisting that he was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that the said firm of D. M. Osborne & Co. was liable to the payment of the whole thereof, as manufacturers for sale of said last above-mentioned finished machines, and threatening, in case payment of the whole thereof, or of any part thereof, should be refused by said firm, that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of said firm; and thereupon and under the circumstances last above-mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the city of Auburn, in the said 24th collection district, on the 30th day of November, 1865, the said firm of D. M. Osborne & Co. paid to the said collector, and said collector then and there compelled the said firm to pay to him, as such collector as aforesaid, and under and in virtue of said wrongful assessment and return, the whole of the said last above-mentioned sum of $1,629 78, being the whole amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid, upon the full value of said finished machines so as aforesaid sold by the said firm of D. M. Osborne & Co. during the said month of October, 1865, without making, and wrongfully refusing to make any deductions whatever for the causes hereinafter more particularly stated.

And the said plaintiffs in fact say, that castings of iron, exceeding ten pounds in weight for each casting, formed large portions of the necessary and component parts, to wit, to the extent of one-eighth

part in value of the said last above-mentioned finished machines; and castings of iron of ten pounds in weight, or less, of each casting, formed other large portions of the other component parts of the said last above-mentioned finished machines, to wit, to the extent of one-twentieth part of the whole value thereof.

And said plaintiffs in fact further say, that all of said castings of iron were made by the said firm of D. M. Osborne & Co. at their said manufacturing establishment in the said city of Auburn; and all of said caid castings of iron had been, previous to said month of November, 1865, assessed by the said defendant as such assessor as aforesaid, to the said firm of D. M. Osborne & Co., to wit, those exceeding ten pounds in weight for each casting at the rate of $3 60 per ton upon the aggregate weight thereof; and those of ten pounds or less in weight for each casting at the rate of six per cent. ad valorem upon the aggregate value thereof; and said assessment had, before the said month of November, 1865, been fully paid by said firm of D. M. Osborne & Co. to the said collector of said 24th district.

And the said plaintiffs in fact further say that said castings of iron in this count mentioned were, and each and every one of them was made by the said D. M. Osborne & Co. in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they, or any of them, ever in fact, sold by the said D. M. Osborne & Co. to others, or in anywise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them for sale, as complete and finished machines.

And the said plaintiffs in fact further say, that said last above-mentioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them any commercial value whatever independent, of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But, on the contrary thereof, the whole value of said last above-mentioned castings of iron when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in and as components parts of the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And the said plaintiffs in fact further say, that each and every of the said castings of iron in this count above mentioned was increased in value after the same was made, and before the same was used as a component and necessary part of said finished machines, by being polished or varnished, or oiled, ground, pressed, trimmed, ornamented, or otherwise more completely finished and fitted for use, and without changing the original character thereof, or the purpose for which the same were severally intended to be used.

And said plaintiffs in fact further say, that, at the time the said last above-mentioned finished machines, which had been so as aforesaid manufactured and sold by the said D. M. Osborne & Co., were so as aforesaid assessed by said defendant, as such assessor as aforesaid, and also at the time said firm paid said assessment or tax of $1,629 78 thereon to said collector, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid, as also to said collector, that the tax to be assessed, levied and collected thereon, should be ascertained by deductiug from the amount produced, by assessing the same at the rate of six per cent. ad valorem upon the whole value thereof, the amount of the taxes which had been so as aforesaid assessed, levied and collected from
60 the said D. M. Osborne & Co. upon the said castings of iron in this count above mentioned, and which so as aforesaid formed necessary and component parts thereof. But said defendant, as such assessor as aforesaid, wrongfully insisted upon assessing, and did wrongfully assess said finished machines in this count above mentioned at the full value thereof, without making, and refusing to make any deduction whatever for the taxes so as aforesaid theretofore assessed, levied and collected upon said necessary and component parts thereof, and he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claimed and insisted that said firm of D. M. Osborne & Co. was liable to be thus assessed thereon; and he, then and there, wrongfully and illegally returned said assessment to the said collector of said 24th district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co.; and thereupon he, the said collector, demanded of the said firm the payment of the whole of said last above-mentioned tax of $1,629 78, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same and the whole thereof, upon and in virtue of said assessment and return, without any deduction whatever; and said firm was, by said collector, compelled to, and they did under such compulsion, and on the 30th day of November, 1865, pay to him, the said collector, the whole of said assessment of $1,629 78, notwithstanding the said objections and protest of the said firm. Wherefore the said plaintiffs say, that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of $1,629 78, for which, with interest thereon from the said 30th day of November, 1865, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

61 And whereas also the said D. M. Osborne & Co. so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of November, 1865, sold and disposed of finished machines of the aggregate value of $75,634.

And whereas the said last above mentioned machines were in the

month of December, 1865, wrongfully assessed by the said defendant as such assessor of internal revenue as aforesaid, at the rate of six per cent. upon the whole of the said aggregate value thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $4,538 04.

And whereas said assessment was wrongfully returned by said defendant, as such assessor to the said collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said firm of D. M. Osborne & Co. the payment of the whole of said last mentioned sum of $4,538 04, so as last aforesaid wrongfully assessed upon said last above mentioned finished machines, he, the said collector, claiming and insisting that he was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that the said firm of D. M. Osborne & Co. was liable to the payment of the whole thereof, as manufacturers for sale of said last above mentioned finished machines; and threatening, in case payment of the whole thereof should be refused by said firm, that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax upon and from the property of said firm; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the city of Auburn, in the said 24th collection district, on the 30th day of December, 1865, the said firm of D. M. Osborne & Co. paid to the said collector, and said collector then and there compelled the said firm to pay to him, as such collector as aforesaid, and under and in virtue of said wrongful assessment and return, the whole of the said last above mentioned sum of $4,538 04, being the whole amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid, upon the full value of said finished machines so as aforesaid sold by the said firm of D. M. Osborne & Co. during the said month of November 1865; without making, and wrongfully refusing to make any deductions whatever, for the causes hereinafter more particularly stated.

And the said plaintiffs in fact say, that castings of iron exceeding ten pounds in weight for each casting, formed large portions of the necessary and component parts, to wit, to the extent of one-eighth part in value of the said last above mentioned finished machines; and castings of iron of ten pounds in weight, or less, of each casting, formed other large portions of the other component parts of the said last above mentioned finished machines; to wit, to the extent of one-twentieth part of the whole value thereof.

And said plaintiffs in fact further say, that all of said castings of iron were made by the said firm of D. M. Osborne & Co. at their said manufacturing establishment in the said city of Auburn; and all of

said castings of iron had been, previous to said month of December, 1865, assessed by the said defendant as such assessor as aforesaid, to the said firm of D. M. Osborne & Co., to wit, those exceeding ten pounds in weight for each casting at the rate of $3 60 per ton upon the aggregate weight thereof; and those of ten pounds or less in weight for each casting at the rate of six per cent. ad valorem upon the aggregate value thereof; and said assessment had, before the said month of December, 1865, been fully paid by said firm of D. M. Osborne & Co. to the said collector of said 24th district.

And the said plaintiffs in fact further say that said castings of iron in this count mentioned were, and each and every one of them was made by the said D. M. Osborne & Co. in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they or any of them, ever in fact, sold by the said D. M. Osborne & Co. to others, or in any wise used or appropriated by them, nor were they or any of them intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in and as component parts of the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And the said plaintiffs in fact further say, that each and every of the said castings of iron in this count above mentioned was increased in value after the same was made, and before the same was used as a component and necessary part of said finished machines, by being polished or varnished, or oiled, ground, pressed, trimmed, ornamented or otherwise more completely finished and fitted for use, and without changing the original character thereof, or the purpose for which the same were severally intended to be used.

And said plaintiffs in fact further say, that at the time the said last above mentioned finished machines, which had been so as aforesaid manufactured and sold by the said D. M. Osborne & Co., were so as aforesaid assessed by said defendant, as such assessor as aforesaid, and also at the time said firm paid said assessment or tax of $4,538 04 thereon to said collector, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid, as also to said collector, that the tax to be assessed, levied and col-

lected thereon should be ascertained by deducting from the amount produced by assessing the same at the rate of six per cent. ad valorem upon the whole value thereof, the amount of the taxes which had been so as aforesaid assessed, levied and collected from the
62 said D. M. Osborne & Co. upon the said castings of iron in this count above mentioned, and which so as aforesaid formed necessary and component parts thereof. But said defendant as such assessor as aforesaid wrongfully insisted upon assessing and did wrongfully assess said finished machines, in this count above mentioned, at the full value thereof, without making and refusing to make any deduction whatever for the taxes so as aforesaid theretofore assessed, levied and collected upon said necessary and component parts thereof, and he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claimed and insisted that said firm of D. M. Osborne & Co. was liable to be thus assessed thereon; and he then and there wrongfully and illegally returned said assessment to the said collector of said 24th district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co.; and thereupon he, the said collector, demanded of the said firm the payment of the whole of said last above mentioned tax of $4,538 04, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same and the whole thereof, upon and in virtue of said assessment and return, without any deduction whatever; and said firm was by said collector compelled to, and they did, under such compulsion, and on the 30th day of December, 1865, pay to him, the said collector, the whole of said assessment of $4,538 04, notwithstanding the said objections and protest of the said firm; wherefore the said plaintiffs say that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of $4,538 04, for which, with interest thereon from the said 30th day of December, 1865, the said plaintiffs as such survivors as aforesaid bring this suit, &c.

63 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of December, 1865, sold and disposed of finished machines of the aggregate value of $17,248.

And whereas the said last above mentioned machines were in the month of January, 1866, wrongfully assessed by the said defendant as such assessor of internal revenue as aforesaid, at the rate of six per cent. upon the whole of the said aggregate value thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $1,034 46.

And whereas said assessment was wrongfully returned by said defendant, as such assessor to the said collector of said 24th collection district, whereupon it became the official duty of said collector to

proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said firm of D. M. Osborne & Co. the payment of the whole of said last mentioned sum of $1,034 46, so as last aforesaid wrongfully assessed upon said last above mentioned finished machines, he, the said collector, claiming and insisting that he was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that the said firm of D. M. Osborne & Co. was liable to the payment of the whole thereof, as manufacturers for sale of said last above mentioned finished machines, and threatening, in case payment of the whole thereof, or of any part thereof, should be refused by said firm, that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of said firm; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the city of Auburn, in the said 24th collection district, on the 31st day of January, 1866, the said firm of D. M. Osborne & Co. paid to the said collector, and said collector then and there compelled the said firm to pay to him, as such collector as aforesaid, and under and in virtue of said wrongful assessment and return, the whole of the said last above mentioned sum of $1,034 46, being the whole amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid, upon the full value of said finished machines so as aforesaid sold by the said firm of D. M. Osborne & Co. during the said month of December, 1865, without making, and wrongfully refusing to make, any deductions whatever, for the causes hereinafter more particularly stated.

And the said plaintiffs in fact say, that castings of iron exceeding ten pounds in weight for each casting formed large portions of the necessary and component parts, to wit, to the extent of one-eighth part in value of the said last above mentioned finished machines; and castings of iron of ten pounds in weight, or less, of each casting, formed other large portions of the other component parts of the said last above mentioned finished machines, to wit, to the extent of one-twentieth part of the whole value thereof.

And said plaintiffs in fact further say, that all of said castings of iron were made by the said firm of D. M. Osborne & Co. at their said manufacturing establishment in the said city of Auburn; and all of said castings of iron had been, previous to said month of January, 1866, assessed by the said defendant as such assessor as aforesaid, to the said firm of D. M. Osborne & Co., to wit, those exceeding ten pounds in weight, for each casting, at the rate of $31 60 per ton, upon the aggregate weight thereof; and those of ten pounds or less in weight, for each casting, at the rate of six per cent. ad valorem, upon the aggregate value thereof; and said assessment had, before

the said month of January, 1866, been fully paid by said firm of D. M. Osborne & Co. to the said collector of said 24th district.

And the said plaintiffs in fact further say, that said castings of iron in this count mentioned were, and each and every one of them was made by the said D. M. Osborne & Co. in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they, or any of them, ever, in fact, sold by the said D. M. Osborne & Co. to others, or in anywise used or appropriated by them, nor were they, or any of them, intended to be sold, used, or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them any commercial value whatever, independent of, or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And the said plaintiffs in fact further say, that each and every of the said castings of iron in this count above mentioned was increased in value after the same was made, and before the same was used as a component and necessary part of said finished machines, by being polished, or varnished, or oiled, ground, pressed, trimmed, ornamented, or otherwise more completely finished and fitted for use, and without changing the original character thereof, or the purpose for which the same were severally intended to be used.

And said plaintiffs in fact further say, that at the time the said last above mentioned finished machines which had been so as aforesaid manufactured and sold by the said D. M. Osborne & Co. were so as aforesaid assessed by said defendant, as such assessor as aforesaid; and also at the time said firm paid said assessment or tax of $1,034 66 thereon to said collector, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid, as also to said collector, that the tax to be assessed, levied and collected thereon, should be ascertained by deducting from the amount produced, by assessing the same at the rate of six per cent. ad valorem upon the whole value thereof, the amount of the taxes which had been so as aforesaid assessed, levied and collected from the said D. M.
64 Osborne & Co. upon the said castings of iron in this count above mentioned, and which so as aforesaid formed necessary and component parts thereof. But said defendant as such assessor

as aforesaid wrongfully insisted upon assessing, and did wrongfully assess said finished machines, in this count above mentioned, at the full value thereof, without making, and refusing to make any deduction whatever for the taxes so as aforesaid theretofore assessed, levied and collected upon said necessary and component parts thereof, and he, the said defendant. as such assessor as aforesaid, then and there wrongfully and illegally claimed and insisted that said firm of D. M. Osborne & Co. was liable to be thus assessed thereon; and he then and there wrongfully and illegally returned said assessment to the said collector of the said 24th district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co.; and thereupon he, the said collector, demanded of the said firm the payment of the whole of said last above mentioned tax of $1,034 46, claiming and insisting that he, the said collector, was, in discharge of his official duty, bound to collect the same and the whole thereof, upon and in virtue of said assessment and return, without any deduction whatever; and said firm was, by said collector, compelled to, and they did, under such compulsion, and on the 31st day of January, 1866, pay to him, the said collector, the whole of said assessment of $1,034 46, notwithstanding the said objections and protest of the said firm; wherefore the said plaintiffs say that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of $1,034 46, for which, with interest thereon from the said 31st day of January, 1866, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

65 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of January, 1866, sold and disposed of finished machines of the aggregate value of $13,209.

And whereas the said last above mentioned machines were, in the month of February, 1866, wrongfully assessed by the said defendant as such assessor of internal revenue as aforesaid, at the rate of six per cent. upon the whole of the said aggregate value thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $792 54.

And whereas said assessment was wrongfully returned by said defendant, as such assessor to the said collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said firm of D. M. Osborne & Co. the payment of whole of said last mentioned sum of $792 54, so as last aforesaid wrongfully assessed upon said last above mentioned finished machines, he, the said collector, claiming and insisting that he was in

discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that the said firm of D. M. Osborne & Co. was liable to the payment of the whole thereof, as manufacturers for sale of said last above mentioned finished machines; and threatening, in case payment of the whole thereof, or of any part thereof should be refused by said firm, that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax upon and from the property of said firm; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the city of Auburn, in the said 24th collection district, on the 28th day of February, 1866, the said firm of D. M. Osborne & Co. paid to the said collector, and said collector then and there compelled the said firm to pay to him, as such collector as aforesaid, and under and in virtue of said wrongful assessment and return, the whole of the said last above mentioned sum of $792 54, being the whole amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid, upon the full value of said finished machines so as aforesaid sold by the said firm of D. M. Osborne & Co. during the said month of January, 1866, without making and wrongfully refusing to make any deductions whatever, for the causes hereinafter more particularly stated.

And the said plaintiffs in fact say, that castings of iron, exceeding ten pounds in weight for each casting, formed large portions of the necessary and component parts, to wit, to the extent of one-eighth part in value of the said last above mentioned finished machines; and castings of iron of ten pounds in weight, or less, of each casting, formed other large portions of the other component parts of the said last above mentioned finished machines, to wit, to the extent of one-twentieth part of the whole value thereof.

And said plaintiffs in fact further say, that all of said castings of iron were made by the said firm of D. M. Osborne & Co., at their said manufacturing establishment in the said city of Auburn; and all of said castings of iron had been, previous to said month of February, 1866, assessed by the said defendant as such assessor as aforesaid, to the said firm of D. M. Osborne & Co., to wit, those exceeding ten pounds in weight for each casting at the rate of $3 60 per ton upon the aggregate weight thereof; and those of ten pounds or less in weight for each casting at the rate of six per cent. ad valorem upon the aggregate value thereof; and said assessment had, before the said month of February, 1866, been fully paid by said firm of D. M. Osborne & Co. to the said collector of said 24th district.

And the said plaintiffs in fact further say, that said castings of iron in this count mentioned were, and each and every one of them, was made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as

aforesaid, and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they, or any of them, ever in fact sold by the said D. M. Osborne & Co. to others, or in any wise used or appropriated by them, nor were they, or any of them, intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not, nor were any of them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in, and as component parts of the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And the said plaintiffs in fact further say, that each and every of the said castings of iron in this count above-mentioned was increased in value after the same was made and before the same was used as a component and necessary part of said finished machines, by being polished or varnished, or oiled, ground, pressed, trimmed, ornamented, or otherwise more completely finished and fitted for use, and without changing the original character thereof, or the purpose for which the same were severally intended to be used.

And said plaintiffs in fact further say, that at the time the said last above mentioned finished machines, which had been so as aforesaid manufactured and sold by the said D. M. Osborne & Co., were so as aforesaid assessed by said defendant, as such assessor as aforesaid; and also at the time said firm paid said assessment or tax of $792 54 thereon to said collector, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid, as also to said collector, that the tax to be assessed, levied and collected thereon should be ascertained by deducting from the amount produced, by assessing the same at the rate of six per cent. ad valorem upon the whole value thereof, the amount of the taxes which had been so as aforesaid assessed, levied and collected from the
66 said D. M. Osborne & Co., upon the said castings of iron in this count above mentioned, and which so as aforesaid formed necessary and component parts thereof. But said defendant as such assessor as aforesaid wrongfully insisted upon assessing, and did wrongfully assess said finished machines in this count above mentioned at the full value thereof, without making, and refusing to make any deduction whatever for the taxes so as aforesaid theretofore assessed, levied and collected upon said necessary and component parts thereof, and he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claimed and in-

sisted that said firm of D. M. Osborne & Co. was liable to be thus assessed thereon; and he, then and there, wrongfully and illegally returned said assessment to the said collector of said 24th district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co.; and thereupon he, the said collector, demanded of the said firm the payment of the whole of said last above mentioned tax of $792 54, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same and the whole thereof, upon and in virtue of said assessment and return, without any deduction whatever; and said firm was, by said collector, compelled to, and they did, under such compulsion, and on the 28th day of February, 1866, pay to him, the said collector, the whole of said assessment of $792 54, notwithstanding the said objections and protest of the said firm; wherefore the said plaintiffs say that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of $792 54, for which, with interest thereon from the said 28th day of February, 1866, the said plaintiffs as such survivors as aforesaid bring this suit, &c.

67 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of February and March, 1866, sold and disposed of finished machines of the aggregate value of $35,779 83.

And whereas the said last above mentioned machines were in the month of April, 1866, wrongfully assessed by the said defendant as such assessor of internal revenue as aforesaid, at the rate of six per cent. upon the whole of the said aggregate value thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $2,146 79.

And whereas said assessment was wrongfully returned by said defendant as such assessor to the said collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said firm of D. M. Osborne & Co. the payment of the whole of said last mentioned sum of $2,146 79, so as last aforesaid wrongfully assessed upon said last above mentioned finished machines, he, the said collector, claiming and insisting that he was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that the said firm of D. M. Osborne & Co. was liable to the payment of the whole thereof, as manufacturers for sale of said last above mentioned finished machines; and threatening, in case payment of the whole thereof, or any part thereof, should be refused

by said firm, that then he, the said collector, would levy and collect the same, together with the penalties, costs, and expenses as provided by law in cases of refusal to pay a legal and proper assessment or tax upon and from the property of said firm; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the city of Auburn, in the said 24th collection district, on the 1st day of May, 1866, the said firm of D. M. Osborne & Co. paid to the said collector, and said collector then and there compelled the said firm to pay to him, as such collector as aforesaid, and under and in virtue of said wrongful assessment and return, the whole of the said last above-mentioned sum of $2,146 79, being the whole amount so as aforesaid wrogfully assessed by said defendant as such assessor as aforesaid, upon the full value of said finished machines so as aforesaid sold by the said firm of D. M. Osborne & Co., during the said months of February and March, 1866, without making, and wrongfully refusing to make any deduction whatever for the causes hereinafter more particularly stated.

And the said plaintiffs in fact say, that castings of iron exceeding ten pounds in weight for each casting formed large portions of the necessary and component parts, to wit, to the extent of one-eighth part in value of the said last above mentioned finished machines; and castings of iron ten pounds in weight, or less, of each casting, formed other large portions of the other component parts of the said last above mentioned finished machines, to wit, to the extent of one-twentieth part of the whole value thereof.

And said plaintiffs in fact further say, that all of said castings of iron were made by the said firm of D. M. Osborne & Co., at their said manufacturing establishment in the said city of Auburn; and all of said castings of iron had been, previous to said month of April, 1866, assessed by the said defendant as such assessor as aforesaid to the said firm of D. M. Osborne & Co., to wit, those exceeding ten pounds in weight for each casting at the rate of $3 60 per ton upon the aggregate weight thereof; and those of ten pounds or less in weight for each casting at the rate of six per cent. ad valorem upon the aggregate value thereof; and said assessment had, before the said month of April, 1866, been fully paid by said firm of D. M. Osborne & Co. to the said collector of said 24th district.

And the said plaintiffs in fact further say, that said castings of iron in this count mentioned were and each and every one of them was made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they, or any of them ever in fact sold by the said D. M. Osborne & Co. to others, or in any wise used or appropriated by them, nor were they or any of them intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not nor were any of them known to dealers in the trade of such or similar articles ; nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as componont parts of said particular machine. But on the contrary thereof, the whole value of said last above mentioned castings of iron when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in and as componen parts of the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid:

And the said plaintiffs in fact further say, that each and every of the said castings of iron in this count above mentioned was increased in value after the same was made and before the same was used as a component and necessary part of said finished machines, by being polished or varnished, or oiled, ground, pressed, trimmed, ornamented, or otherwise more completely finished and fitted for use, and without changing the original character thereof, or the purpose for which the same were severally intended to be used.

And said plaintiffs in fact futher say, that at the time the said last above mentioned finished machines which had been so as aforesaid manufactured and sold by the said D. M. Osborne & Co. were so as aforesaid assessed by said defendant as such assessor as aforesaid, and also at the time said firm paid said assessment or tax of $2,146 79 thereon to said collector, they, the said D. M. Osborne & Co., insisted as well to said defendant as such assessor as aforesaid as also to said collector, that the tax to be assessed, levied and collected thereon, should be ascertained by deducting from the amount produced, by assessing the same at the rate of six per cent. ad valorem upon the whole value thereof, the amount of the taxes which had been so as aforesaid assessed, levied, and collected from the said D. M Osborne
68 & Co. upon the said castings of iron in this count above mentioned, and which so as aforesaid formed necessary and component parts thereof. But said defendant as such assessor as aforesaid wrongfully insisted upon assessing and did wrongfully assess said finished machines in this count above mentioned at the full value thereof, without making and refusing to make any deduction whatever for the taxes so as aforesaid theretofore assessed, levied, and collected upon said necessary and component parts thereof, and he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claimed and insisted that said firm of D. M. Osborne & Co. was liable to be thus assessed thereon; and he then and there wrongfully and illegally returned said assessment to the said collector of said 24th district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co.; and thereupon he, the said collector, demanded of the said firm the payment of the whole of said last above mentioned tax of $2,146 79, claiming and in-

sisting that he, the said collector, was in discharge of his official duty bound to collect the same and the whole thereof, upon and in virtue of said assessment and return, without any deduction whatever; and said firm was by said collector compelled to, and they did under such compulsion, and on the 1st day of May, 1866, pay to him, the said collector, the whole of said assessment of $2,146 79, notwithstanding the said objections and protest of the said firm; wherefore the said plaintiffs say, that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of $2,146 79, for which, with interest thereon from the said 1st day of May, 1866, the said plaintiffs as such survivors as aforesaid bring this suit, &c.

69 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of April and May, 1866, sold and disposed of finished machines of the aggregate value of $1,590 66.

And whereas the said last above-mentioned machines ware, in the month of June, 1866, wrongfully assessed by the said defendant as such assessor of internal revenue as aforesaid, at the rate of per cent. upon the whole of the said aggregate value thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $95 44.

And whereas said assessment was wrongfully returned by said defendant as such assessor to the said collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said firm of D. M. Osborne & Co. the payment of the whole of said last-mentioned sum of $95 44, so as last aforesaid wrongfully assessed upon said last above-mentioned finished machines, he, the said collector, claiming and insisting that he was, in discharge of his official duty bound to collect the same upon and in virtue of said assessment and return so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that the said firm of D. M. Osborne & Co. was liable to the payment of the whole thereof, as manufacturers for sale of said last above-mentioned finished machines; and threatening, in case payment of the whole thereof or of any part thereof, should be refused by said firm, that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of said firm; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the city of Auburn, in the said 24th collection district, on the 30th day of May, 1866, the said firm of D. M. Osborne & Co. paid to the said collector, and said collector then and there compelled the said firm to pay to him, as such col-

lector as aforesaid, and under and in virtue of said wrongful assessment and return, the whole of the said last above-mentioned sum of $95 44, being the whole amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid, upon the full value of said finished machines so as aforesaid sold by the said firm of D. M. Osborne & Co. during the said month of April and May, 1866, without making, and wrongfully refusing to make, any deductions whatever, for the causes hereinafter more particularly stated

And the said plaintiffs in fact say, that castings of iron, exceeding ten pounds in weight for each casting, formed large portions of the necessary and component parts, to wit, to the extent of one-eighth part in value of the said last above-mentioned finished machines; and castings of iron of ten pounds in weight, or less, of each casting, formed other large portions of the other component parts of the said last above-mentioned finished machines, to wit, to the extent of one-twentieth part of the whole value thereof.

And said plaintiffs in fact further say, that all of said castings of iron were made by the said firm of D. M. Osborne & Co., at their said manufacturing establishment in the said city of Auburn; and all of said castings of iron had been, previous to said month of June, 1866, assessed by the said defendant as such assessor as aforesaid to the said firm of D. M. Osborne & Co., to wit, those exceeding ten pounds in weight for each casting at the rate of $3 60 per ton upon the aggregate weight thereof; and those of ten pounds or less in weight, for each casting, at the rate of six per cent. ad valorem upon the aggregate value thereof; and said assessment had, before the said month of May, 1866, been fully paid by said firm of D. M. Osborne & Co. to the said collector of the said 24th district.

And the said plaintiffs in fact further say, that said castings of iron in this count mentioned were, and each and every one of them was, made by the said D. M. Osborne & Co. in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they, or any of them, ever in fact sold by the said D. M. Osborne & Co. to others, or in anywise used or appropriated by them, nor were they or any of them intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them, and for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above-mentioned castings of iron were not, nor were any of them, known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But, on the contrary thereof, the whole value of said last above-mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, con-

sisted in their adaptation for use in, and as component parts of, the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And the said plaintiffs in fact further say, that each and every of the said castings of iron in this count above mentioned was increased in value, after the same was made, and before the same was used as a component and necessary part of said finished machines, by being polished or varnished, or oiled, ground, pressed, trimmed, ornamented, or otherwise more completely finished and fitted for use, and without changing the original character thereof, or the purpose for which the same were severally intended to be used.

And said plaintiffs in fact further say, that at the time the said last above-mentioned finished machines, which had been so as aforesaids manufactured and sold by the said D. M. Osborne & Co. were so a aforesaid assessed by said defendant as such assessor aforesaid, and also at the time said firm paid said assessment or tax of $95 44 thereon to said collector, they, the said D. M. Osborne & Co., insisted, as well to said defendant as such assessor as aforesaid, as also to said collector, that the tax to be assessed, levied and collected thereon should be ascertained by deducting from the amount produced, by assessing the same at the rate of six per cent. ad valorem upon the whole value thereof, the amount of the taxes which had been so as aforesaid assessed, levied and collected from the said D. M. Os-
70 borne & Co. upon the said castings of iron in this count above mentioned, and which so as aforesaid formed necessary and component parts thereof. But said defendant, as such assessor as aforesaid, wrongfully insisted upon assessing, and did wrongfully assess said finished machines, in this count above mentioned, at the full value thereof, without making, and refusing to make any deduction whatever for the taxes so as aforesaid theretofore assessed, levied and collected upon said necessary and component parts thereof, and he, the said defendant, as such assessor aforesaid, then and there wrongfully and illegally claimed and insisted that said firm of D. M. Osborne & Co. was liable to be thus assessed thereon; and he, then and there, wrongfully and illegally returned said assessment to the said collector of said 24th district, whereupon it became the official duty of said collector to proceed and collect said monies, so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid of the said firm of D. M. Osborne & Co.; and thereupon he, the said collector, demanded of the said firm the payment of the whole of said last above-mentioned tax of $95 44, claiming and insisting that he, the said collector, was, in discharge of his official duty, bound to collect the same and the whole thereof, upon and in virtue of said assessment and return, without any deduction whatever; and said firm was, by said collector, compelled to, and they did, under such compulsion, and on the 30th day of May, 1866, pay to him, the said collector, the whole of said assessment of $95 44, notwithstanding the said objections and protest of the said firm; wherefore the said plaintiffs say, that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of $95 44; for which, with

interest thereon from the said 30th day of May, 1866, the said plaintiffs, as such survivors as aforesaid, bring this suit, &c.

71 And whereas also the said D. M. Osborne & Co., so being the exclusive manufacturers of the said reapers and mowers, known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York, in and during the month of May, 1866, sold and disposed of finished machines of the aggregate value of $1,137 50.

And whereas the said last above mentioned machines were in the month of June, 1866, wrongfully assessed by the said defendant as such assessor of internal revenue as aforesaid, at the rate of six per cent. upon the whole of the said aggregate value thereof, amounting in the aggregate of tax thus wrongfully assessed thereon by said defendant as such assessor to the sum of $68 25.

And whereas said assessment was wrongfully returned by said defendant as such assessor to the said collector of said 24th collection district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co., and thereupon he, the said collector, demanded of the said firm of D. M. Osborne & Co. the payment of the whole of said last mentioned sum of $68 25, so as last aforesaid wrongfully assessed upon said last above mentioned finished machines, he, the said collector, claiming and insisting that he was, in discharge of his official duty, bound to collect the same upon and in virtue of said assessment and return, so as aforesaid wrongfully made and returned to him by said defendant as such assessor as aforesaid, and that the said firm of D. M. Osborne & Co. was liable to the payment of the whole thereof, as manufacturers for sale of said last above mentioned finished machines; and threatening, in case payment of the whole thereof or of any part thereof should be refused by said firm, that then he, the said collector, would levy and collect the same, together with the penalties, costs and expenses, as provided by law in cases of refusal to pay a legal and proper assessment or tax, upon and from the property of said firm; and thereupon and under the circumstances last above mentioned, and under the objections and protest hereinafter in that behalf stated, to wit, at the city of Auburn, in the said 24th collection district, on the 2d day of July, 1866, the said firm of D. M. Osborne & Co. paid to the said collector, and said collector then and there compelled the said firm to pay to him as such collector as aforesaid, and under and in virtue of said wrongful assessment and return, the whole of the said last above-mentioned sum of $68 25, being the whole amount so as aforesaid wrongfully assessed by said defendant as such assessor as aforesaid, upon the full value of said finished machines so as aforesaid sold by the said firm of D. M. Osborne & Co. during the said month of May, 1866, without making and wrongfully refusing to make any deductions whatever, for the causes hereinafter more particularly stated.

And the said plaintiffs in fact say, that castings of iron, exceeding

ten pounds in weight for each casting, formed large portions of the necessary and component parts, to wit, to the extent of one-eighth part in value of the said last above mentioned finished machines; and castings of iron of ten pounds in weight or less, of each casting, formed other large portions of the other component parts of the said last above mentioned finished machines, to wit, to the extent of one-twentieth part of the whole volue thereof.

And said plaintiffs in fact further say, that all of said castings of iron were made by the said firm of D. M. Osborne & Co., at their said manufacturing establishment in the said city of Auburn; and all of said castings of iron had been, previous to said month of June, 1866, assessed by the said defendant as such assessor as aforesaid, to the said firm of D. M. Osborne & Co., to wit, those exceeding ten pounds in weight for each casting at the rate of $3 60 per ton upon the aggregate weight thereof; and those of ten pounds or less in weight for each casting at the rate of six per cent. ad valorem upon the aggregate value thereof; and said assessment had before the said month of June, 1866, been fully paid by said firm of D. M. Osborne & Co. to the said collector of said 24th district.

And the said plaintiffs in fact further say, that said castings of iron in this count mentioned were and each and every one of them was made by the said D. M. Osborne & Co., in and at their said manufacturing establishment in the said city of Auburn, to be used by them in the manufacture of their said reapers and mowers as aforesaid, and the same were not, nor was any of them, nor any part thereof, intended to be, nor were they or any of them, ever in fact, sold by the said B. M. Osborne & Co. to others, or in any wise used or appropriated by them, nor were they or any of them intended to be sold, used or appropriated by them to or for any other use or purpose than as component and necessary parts of the reaping and mowing machines so as aforesaid exclusively manufactured by them for sale as complete and finished machines.

And the said plaintiffs in fact further say, that said last above mentioned castings of iron were not, nor were any them known to dealers in the trade of such or similar articles; nor had they, nor had any or either of them any commercial value whatever, independent of or greater than the materials from which they were made, except to be finished and fitted for use as component parts of said particular machine. But on the contrary thereof, the whole value of said last above mentioned castings of iron, when finished and fitted for use, over and above the value of the materials of which they were made, consisted in their adaptation for use in and as component parts of the reapers and mowers so as aforesaid exclusively manufactured by the said D. M. Osborne & Co. for sale as aforesaid.

And the said plaintiffs in fact further say, that each and every of the said castings of iron in this count above mentioned was increased in value, after the same was made, and before the same was used as a component and necessary part of said finished machines, by being polished or varnished, or oiled, ground, pressed, trimmed, ornamented or otherwise more completely finished and fitted for use, and without

changing the original character thereof, or the purpose for which the same were severally intended to be used.

And said plaintiffs in fact further say, that at the time the said last above mentioned finished machines, which had been so as aforesaid manufactured and sold by the said D. M. Osborne & Co., were so as aforesaid assessed by said defendant, as such assessor as aforesaid, and also at the time said firm paid said assessment or tax of $68 25 thereon to said collector, they, the said D. M. Osborne & Co., insisted as well to said defendant as such assessor as aforesaid, as also to said collector, that the tax to be assessed, levied and collected thereon should be ascertained by deducting from the amount produced, by assessing the same at the rate of six per cent. ad valorem upon the whole value thereof, the amount of the taxes which had been so as aforesaid assessed, levied and collected from the said D. M.
72 Osborne & Co. upon the said castings of iron in this count above mentioned, and which so as aforesaid formed necessary and component parts thereof. But said defendant as such assessor as aforesaid wrongfully insisted upon assessing and did wrongfully assess said finished machines in this count above mentioned at the full value thereof, without making and refusing to make any deduction whatever for the taxes so as aforesaid theretofore assessed, levied and collected upon said necessary and component parts thereof, and he, the said defendant, as such assessor as aforesaid, then and there wrongfully and illegally claimed and insisted that said firm of D. M. Osborne & Co. was liable to be thus assessed thereon; and he then and there wrongfully and illegally returned said assessment to the said collector of said 24th district, whereupon it became the official duty of said collector to proceed and collect said monies so wrongfully assessed and wrongfully returned by said defendant as such assessor as aforesaid, of the said firm of D. M. Osborne & Co.; and thereupon he, the said collector, demanded of the said firm the payment of the whole of said last above mentioned tax of $68 25, claiming and insisting that he, the said collector, was in discharge of his official duty bound to collect the same and the whole thereof, upon and in virtue of said assessment and return, without any deduction whatever, and said firm was by said collector compelled to and they did, under such compulsion, and on the 2d day of July, 1866, pay to him, the said collector, the whole of said assessment of $68 25, notwithstanding the said objections and protest of the said firm; wherefore the said plaintiffs say, that the said firm of D. M. Osborne & Co. was injured and sustained damages to the amount of $68 25, for which, with interest thereon from the said 2d day of July, 1866, the said plaintiffs as such survivors as aforesaid bring this suit, &c.

73 And afterwards, to wit, on the 13th day of August, 1866, until which time the said Joseph Gates had leave to imparte to the said declaration and then to answer the same, as yet of the same June term of said Circuit Court, held at the place last aforesaid, [held at the place last aforesaid,] came the said Joseph Gates, by William A. Dart, esq., his attorney, and brought into the said

court before the aforesaid judges thereof then there his plea to said declaration, and filed the same with the clerk of said court, which plea follows in these words, that is to say:

Circuit Court of the United States of America, 2nd circuit, held in and for the northern district of New York.

JOSEPH GATES
ads.
DAVID M. OSBORNE AND JOHN H. Osborne, survivors of themselves and Cyrus C. Dennis, deceased.

And the said Joseph Gates, by William A. Dart, his attorney, comes and defends the wrong and injury, when, &c., and says that he is not guilty of the said supposed grievances above laid
74 to his charge, in manner and form as the said plaintiffs have above thereof complained against him, and of this he, the said defendant, puts himself upon the country. And the said plaintiffs doth the like, &c.

WILLIAM A. DART,
Def't's Att'y.

Therefore the issue above joined was ordered by the said Circuit Court to be tried at the Circuit Court appointed to be held in the city of Albany, in and for the said northern district of New York, on the second Tuesday of October, one thousand eight hundred and sixty-six.

A day is given to the parties aforesaid before the said judges of said Circuit Court, at the court-house in said city of Albany, on the said second Tuesday of October, one thousand eight hundred and sixty-six.

At which last mentioned day and place came as well the said David M. Osborne and John H. Osborne, survivors of themselves and Cyrus C. Dennis, deceased, plaintiffs as aforesaid, by their attorney aforesaid, as also the said Joseph Gates, defendant aforesaid, by his attorney aforesaid, and the said issue being called for trial at
75 said last mentioned Circuit Court, thereupon the said attornies for said parties respectively in open court waived a trial by jury and consented and stipulated that said issue should be heard, tried and determined by said court without a jury. Whereupon the trial of said issue before the said court was entered upon and concluded.

But because it was undecided by said court upon said trial whether or not by the laws of the land the said David M. Osborne and John H. Osborne, as such survivors as aforesaid, ought to recover against the said Joseph Gates the damages claimed by them in and by their said declaration, or any part thereof, by the consent of the said attornies of the said parties, the decision of the court upon said issue

was reserved until the then next term of said Circuit Court, to be held at the court-house in the said city of Albany, on the third Tuesday then next. Therefore a day was given to the parties aforesaid before the judges of said circuit at the time and place last above mentioned.

And afterwards, to wit, at the time and place last above mentioned, before the judges of said Circuit Court then there,
76 came as well the said plaintiffs, by their attornies aforesaid, as also the said defendant, by his attorney aforesaid, but because the said court then there was not yet determined what judgment to give in and upon the said premises, therefore a day was given to the parties aforesaid to be before the judges aforesaid, at a Circuit Court to be held at the court-house in the city of Utica, on the third Tuesday of March, one thousand eight hundred and sixty-seven.

At which time and place last above mentioned, before the judges of said Circuit Court, there came as well the said plaintiffs by their attorney aforesaid, as also the said defendant, by his aforesaid attorney, but because the said court then there was not yet determined what judgment to give in and upon said premises, therefore a day was given to the parties aforesaid to be before the judges of said Circuit Court at a term of said court to be held at the court-house in the village of Canandaigua, on the third Tuesday of June, one thouoand eight hundred and sixty-seven.

At which time and place last aforesaid, before the judges of said Circuit Court then there, came as well the said plaintiffs,
77 by their attorney aforesaid, as also the said defendant, by his attorney aforesaid; but because the said court then there was not yet determined what judgment to give in and upon the premises, therefore a day was given to the parties aforesaid to be at said Circuit Court, before the judges thereof, at a term of said court to be held at the court-house in the city of Albany aforesaid, on the second Tuesday of October, one thousand eight hundred and sixty-seven.

At which time and place last above mentioned, before the judges of said Circuit Court then there, came as well the said plaintiffs, by their attorney aforesaid, as also the said defendant, by his aforesaid attorney; but because the said court then there was not yet determined what judgment to give in and upon the premises, therefore a day was given to the parties aforesaid to be before said Circuit Court, before the judges thereof, at the next term thereof, to be held at the court-house in the city of Utica, on the the third Tuesday of March then next.

At which time and place last aforesaid, before the judges of said Circuit Court then there, came as well the said plaintiffs, by
78 their attorney aforesaid, as also the said defendant, by his aforesaid attorney, but because the said court then there was not yet determined what judgment to give in and upon the premises, therefore a day was given to the parties aforesaid to be before said Circuit Court, before the judges thereof, at the next term thereof

appointed to be held at the court-house in the village of Canandaigua, on the third Tuesday of June then next.

At which time and place last above mentioned, before the judges of said Circuit Court then there, came as well the said plaintiffs, by their attorney aforesaid, as also the said defendant, by his aforesaid attorney; but because the said court then there was not yet determined what judgment to give in and upon the premises, therefore a day was given to the parties aforesaid to be before said Circuit Court, before the judges thereof, at this day, to wit, at the term of said court appointed to be held by and before the judges thereof now here, at the court-house in the city of Albany, on this second Tuesday of October, one thousand eight hundred and sixty-eight.

79 And now at this day, that is to say, on the nineteenth day of October, as yet of this same term of October, one thousand eight hundred and sixty-eight, at the court-house in the city of Albany aforesaid, the parties aforesaid, by their respective attornies aforesaid, appeared before said Circuit Court, before the judges thereof now here.

And the said court having duly considered the premises, rendered a decision upon said issue, and found, determined and adjudged that said defendant was guilty of the said several grievances charged against him by the said plaintiffs in their said declaration, and awarded and adjudged that said plaintiffs had sustained damages occasioned thereby to the amount of nine thousand eight hundred and five dollars and twelve cents, besides [besides] their costs and charges in and about their suit in this behalf expended, and for said costs and charges to six cents.

Therefore it is considered that the said David M. Osborne and John H. Osborne, survivors of themselves and Cyrus C. Dennis, do recover against the said Joseph Gates their said damages,

80 costs and charges by the court in form aforesaid awarded and adjudged to them, and also one hundred and thirty-one dollars and sixty-nine cents for their costs and charges by the said court now here adjudged to them of increase, to the said David M. Osborne and John H. Osborne, as survivors as aforesaid, and with their assent. which said damages, costs and charges in the whole amount to nine thousand nine hundred and thirty-six dollars and eighty-seven cents.

And the said Joseph Gates in mercy, &c.

Filed Oct. 22, 1868.

Judg't signed Oct 22, 1868.

A. A. BOYCE, *Clerk.*

81 Supreme Court United States.

Joinder in error.

DAVID M. OSBORNE AND JOHN H. Osborne, survivors of themselves and Cyrus C. Dennis, dec'd, def'ts in error,
ads.
JOSEPH GATES, pl'ff in error.

And afterwards, to wit, on the first Monday in December, in December term, in the year of our Lord one thousand eight hundred and sixty-eight, the said David M. Osborne and John H. Osborne, survivors of themselves and Cyrus C. Dennis, deceased, by David Wright, their attorney, freely come here into court and say that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid, and they pray that the said Supreme Court of judicature, before the justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid given may be in all things affirmed, &c.

D. WRIGHT,
Att'y for Def'ts in Error, Auburn, N. Y.

REC. 373—9

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

JOSEPH GATES, Assessor of Internal Revenue, *Plaintiff in Error*,

vs.

DAVID M. OSBORN and JOHN H. OSBORN, survivors of themselves and C. Denis, deceased.

No. 161.

In error to the Circuit Court of the United States for the Northern District of New York.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT.

This suit was brought by the defendants in error on the 20th of July, 1866, in the circuit court of the United States for the northern district of New York, against the plaintiff in error, as assessor of internal revenue for the 24th collection district of the State of New York, to recover damages claimed to have been sustained in consequence of alleged illegal assessments of internal revenue taxes made by the latter, as such assessor, upon certain articles manufactured by the former within the

period intervening between the months of June, 1864, and June, 1866.

The declaration contains forty-one counts, of which the first fourteen relate to taxes, alleged to have been illegally assessed by the defendant, and by him sent to the collector for collection, and afterwards paid to the collector under protest by the plaintiffs, upon iron castings weighing ten pounds each, or less, manufactured by them during the aforesaid period, to be used as component parts of certain reaping and mowing machines, (printed record, pp. 9 to 39;) the next fourteen counts relate to taxes alleged to have been thus assessed and paid upon iron castings exceeding ten pounds in weight, manufactured by plaintiffs during the same period and for the same purpose, (*Ibid.*, pp. 39 to 68;) and the remaining counts relate to assessments alleged to have been thus made and paid upon the aforesaid machines, in a finished condition, manufactured by plaintiffs during the same period, without the allowance of any deduction for the taxes assessed and paid upon the said castings, as component parts of these machines, (*Ibid.*, pp. 68 to 105.) Each count concludes with an *ad damnum* to the amount of the taxes so alleged to have been illegally assessed by the defendant, and afterwards paid under protest by the plaintiffs, with interest thereon, &c.

Defendant pleaded the general issue, and, upon the cause afterwards coming on for trial, the parties respectively waived a trial by jury, and agreed that the issue

should be tried and determined by the court without a jury. (*Ibid.*, p. 106.)

The court found for the plaintiffs, and gave judgment in their favor for $9,805 12, besides costs, (*Ibid.*, p. 108;) whereupon the defendant has sued out this writ of error. That judgment, as it would seem, embraces the amount of the taxes which were assessed and paid upon the iron castings separately from the finished machines, and interest thereon.

The following appears on the record, (*Ibid*, pp. 4 and 5,) as a statement of the facts agreed upon, dated October 15, 1866, and signed by the attorneys of the parties:

"The plaintiffs for several years past have been manufacturers of reaping and mowing machines, at the city of Auburn, and within the 24th collection district of the State of New York.

"The machines made by them were known as 'the Kirby.' They were made and sold by the plaintiffs as licensees under the several patents in accordance with which they were made.

"The plaintiffs had the exclusive right to make and sell machines under those patents.

"The castings were all made by the plaintiffs themselves, and were made to be, and were in fact, used exclusively as component parts of the machines made and sold by the plaintiffs, and were not any of them suitable for use, nor could any of them have been used or sold for any other purpose, nor as parts of any ma-

chine which was made by any other person or manufacturer.

"They were all made from pig iron, upon which the duty required to be paid by the internal revenue law had been paid.

"All of these castings required to be polished; many of them required to be painted; many to be varnished; and all required to be examined and tested before use, to fit them for use, and to see that they were perfect and fit for use by the plaintiffs, as component parts of 'the Kirby' machine.

"In selling the machine, plaintiffs included as parts thereof all the necessary pieces of castings and of wood work to constitute a complete working machine in the field; but they did not put all of the several parts together, because it was much more convenient to transport them when not put together. They were put together when the purchaser was ready to use the machine in the field.

"Previous to the month of March, 1865, the plaintiffs had never been required, nor did they make any return to the assessor or assistant assessor of their district in regard to any castings made by them; nor was any duty or tax before that time levied apon any of such castings, except as they were included in the machines when finished and sold by the plaintiffs. But in the month of March, 1865, the defendant, as the assessor of the 24th district, was directed by the Commissioner of Internal Revenue to require (and he ac-

cordingly did require) of the plaintiffs that they should return, in the form and manner required by the internal revenue act, the number of tons of castings of more than ten pounds in weight of each casting, which had been made by them during the months of July, August, September, October, November, and December, 1864, and the months of January and February, 1865; and also, the value of all the castings made by them during the same time of ten pounds or less in weight of each casting: also, of all the finished machines sold by them during the same time, in order that the same might be taxed separately, that is to say—

"1st. That the castings of ten pounds in weight or less of each casting should be taxed at the rate of five per cent. ad valorem upon the value thereof;

"2d. That the castings of over ten pounds in weight of each casting should be taxed at the rate of $3 per ton; and,

"3d. That the machines which had been finished and sold during that time should be taxed at five per cent. ad valorem upon the actual value thereof, including the value of all of said castings which had been used as component parts of said finished machines, and without any deduction being made for the taxes already assessed upon such castings.

"That such communication was also made to the assistant assessor for said district by the defendant, to whom the plaintiffs made the returns herein mentioned, who transmitted them to the defendant.

"The plaintiffs objected and protested in writing upon said returns against the assessment, and also against the payment of the amount assessed; but the assistant assessor, under the definite instructions from the Commissioner of Internal Revenue, before mentioned, as transmittod to him by the defendant, insisted upon the return as above specified; whereupon the plaintiffs, to avoid the penalty for refusing to make such returns as required, did make the return in the form required; and, thereupon, the assessment was made for the time above specified, and in the form and manner also specified.

"That assessment was returned to the collector of the district, and the taxes were paid to him under objection and written protest.

"The same state of facts apply to every month thereafter, until the act of Congress placed reapers and mowers upon the free list.

"This action is brought against the defendant to recover the amount of the excess of tax assessed and collected of the plaintiffs."

There is also in the record a copy of plaintiffs' protest, referred to in the foregoing statement, and an abstract of the weight, value, &c., of the castings and machines, with the amounts assessed thereon, which was agreed to present a correct memorandum of the taxes collected from the plaintiffs, (*ibid.*, 5 to 7,) signed by the attorneys of the parties, and dated and filed October 17, 1868. The judgment was signed October 22, 1868.

ARGUMENT.

I. In the first clause of the agreed facts, (p. 4,) it is agreed that "the plaintiffs, for several years past, have been manufacturers of reaping and mowing machines at the city of Auburn, and within the 24th collection district of the State of New York;" and in the eighth clause of the same statement of facts, it is said that "the defendant, as the assessor of the 24th district, was directed by the Commissioner of Internal Revenue to require, and he accordingly did require, of the plaintiffs that they should return, &c., the number of tons," &c. In the declaration, (p. 9,) it is alleged that the plaintiffs bring "their certain declaration against Joseph Gates, the assessor of internal revenue for the 24th district of the State of New York, which is in and within the said northern district of New York;" and the declaration begins "and whereas the said D. M. Osborn & Company, so being the exclusive manufacturers of the said reapers and mowers known as the Kirby Harvester and Mower, at their said manufacturing establishment in the said city of Auburn, and within the said 24th collection district of the said State of New York," &c.

From this and other statements in the record of like import, it seems the parties were all resident within and probably citizens of the State of New York; and it is well settled that a circuit court of the United States has no jurisdiction of a suit originally brought therein to recover back internal revenue taxes paid under protest, or brought to recover damages for an alleged ille-

gal assessment of internal revenue taxes collected or paid, unless the citizenship of the parties is such as to give it jurisdiction, and this citizenship must be distinctly averred. Insurance Company *vs.* Richie, 5 Wall., 541; Hornthal *et al.*, *vs.* Keary, Sup. Ct. U. S. Dec. T., 1869.

The order to the circuit court must, therefore, be to dismiss this suit for want of jurisdiction.

II. The first assessment complained of was in March, 1865, for the months from July, 1864, to February, 1865, both inclusive. There was then an assessment for each of the following months, up to and including May, 1866, and a count on each assessment.

The agreed facts page 5 state "that the same state of facts apply to every month thereafter, until the act of Congress placed reapers and mowers upon the free list." Reapers and mowers were placed upon the free list by the 10th section of the act of July 13, 1866, (14 Stat. 149,) from and after its passage.

In every case the amount of the tax was paid by the plaintiffs to the collector, as they allege, under protest. This action is against the assessor for damages sustained by reason of these assessments, which are alleged to be

excessive in amount, as including taxes upon the castings in addition to the tax upon the finished machines.

An action of *assumpsit* lies against a collector of internal revenue (in a State court only, unless the citizenship of the parties gives jurisdiction to a circuit court of the United States,) to recover back internal revenue taxes paid him under protest, provided the suit is brought within the time, and after complying with the conditions required by the statute. The suit, though in the State court, can, by the defendant collector, be removed by *certiorari* to the circuit court of the United States. Philadelphia *vs.* The Collector, 5 Wallace, 720.

The assessor is a *quasi* judicial officer, and it is a general principle applicable to all judicial officers that they are not liable to a civil action for any judicial act done within their jurisdiction. In reference to judges of limited and inferior authority, it has been held that they are protected only when they act within their jurisdiction. Randall *vs.* Brigham, 7 Wallace, 523 and 535.

Whether the tax lists transmitted by the assessor to the collector be regarded as of the nature of tax warrants or not, and whether the assessor had jurisdiction of the subject-matter and the person or not, no suit in the nature of trespass or trespass on the case for damages can be brought against the assessor for *taxes paid* to the collector in satisfaction of the assessments.

The suit in this case should have been an action of *assumpsit* against the collector of internal revenue.

It is only when the collector distrains property or does other acts affecting the person or property of the person taxed, and justifies under a tax warrant transmitted to him by the assessor, ~~which warrant is valid on its face,~~ but such as the assessor had no lawful authority to issue, that the assessor is held liable to an action of damages for the acts done by the collector. In this case the collector did nothing but receive the money paid to him.

For the grounds and limitations of an assessor's liability to an action, as held in the courts of different States, see Weaver *vs.* Devendorf *et al.*, 3 Denio, 117; Barhyte *vs.* Shepherd *et al.*, 35 N. Y. Rep., 238; Swift *vs.* The City of Poughkeepsie, 37 N. Y. Rep., 511; Little *vs.* Greenleaf *et al.*, 7 Mass. Rep., 236; Stetson *vs.* Kempton *et al.*, 13 Mass. Rep., 272; Dickinson *et al. vs.* Billings *et al.*, 4 Gray, 42; Middlesex Railroad Company *vs.* The City of Charlestown, 8 Allen, 330. This liability of assessors is, of course, modified by the statutes of the different States. See chap. 11, sec. 51, General Statutes of Mass., 1860.

The 44th section of the act of July 30, 1864, (13 Stat., 239,) and the amendment thereto in the act of July 13, 1866, (14 Stat., 111,) authorizing the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, to refund all damages and costs recovered against *assessors, assistant*

assessors, collectors, deputy collectors, and inspectors, in any suit which shall be brought against them or any of them by reason of anything which shall or may be done in the due performance of their official duties, do not authorize any suit against an assessor, except such as could be brought at the time these acts were passed, consistently with the statutes then existing and the general principles of law.

III. The internal revenue laws in force during the period embraced in this suit were the act of June 30, 1864, and the amendatory act of March 3, 1865, (13 Stat., 223, 469,) and the assessments of taxes complained of in the declaration were made under the 94th section of the act of 1864, declaring that there shall be levied, collected, and paid, the following duties, that is to say—

"On stoves and hollow-ware, and *castings of iron exceeding ten pounds in weight for each casting, not otherwise provided for*, a duty of three dollars per ton." (13 Stat., 268.)

"On all manufactures of cotton, wool, silk, worsted, flax, hemp, jute, India-rubber, gutta percha, wood, willow, glass, pottery-ware, leather, paper, *iron*, steel,

lead, tin, copper, zinc, brass, gold, silver, horn, ivory, bone, bristles, *wholly or in part, or of other materials not in this act otherwise provided for*, a duty of five per centum ad valorem." (13 Stat., 270.)

By the 5th section of the act of 1865, (13 Stat., 483,) these duties were thereafter increased one-fifth, or twenty per centum; thus making the duty imposed by the former provision $3 60 per ton, and that imposed by the latter provision 6 per cent. ad valorem.

The claim of the plaintiff in error is, that the iron castings and the finished machines were liable to taxation, under these provisions of law, as separate and distinct articles of manufacture; that the castings which exceeded ten pounds in weight each came within the enactment first above quoted, and were subject, to a tax of $3 and $3 60 per ton, and that the castings which weighed each ten pounds or less, and also the machines in a finished state, came within the enactment last quoted, and were taxable at the rates of 5 and 6 per cent. ad valorem.

The 94th section of the internal revenue act of June 30, 1864, (13 Stat., 264,) imposes taxes upon "the articles, goods, wares, and merchandise, hereinafter mentioned, except where otherwise provided, which shall be produced and sold, or be manufactured or made and sold, or be *consumed or used by the manufacturer or producer thereof*," &c.

The proviso to the 93d section of the same act is in these words: "That whenever a producer or manufacturer shall use or consume, or shall remove for consump-

tion or use, any articles, goods, wares, or merchandise, which if removed for sale would be liable to taxation, he shall be assessed upon the saleable value of the articles, goods, wares, or merchandise so used or so removed for consumption or use." (13 Stat , 264.)

The 86th section of the same act requires a return by the manufacturer, producer, or agent, of all goods, wares and merchandise, liable to taxation, that have been *consumed or used by the owner or agent, or used for the production of another manufacture or product*, together with the market value of the same at the time of such use or consumption. (13 Stat., 260.)

The 83d section of the same act provides that there shall be paid by the manufacturer or producer to the the collector of internal revenue the duties on goods, wares, merchandise, and articles produced or manufactured, and sold or delivered, whether *manufactured or produced for himself or for others*. (13 Stat., 258.)

The proviso to the second paragraph of section 86 of the same act prohibits a deduction of commissions in determining taxable value when goods, &c., are used or consumed by the manufacturer, producer, or agent thereof.

It is evident, then, that the plaintiffs were liable to pay a tax on castings manufactured and used by them in making their machines, in the same manner as if they had manufactured and sold the same castings. It is equally plain that the person who manufactures both the castings and the machines, must, under the internal

revenue laws, pay the same amount of taxes as two persons would pay, one of whom manufactured castings and sold them to the other, who from them manufactured the machines; and that the tax of five per cent. *ad valorem* on all manufactures of iron is a tax on full values, and not, unless it is expressly so provided, a tax on increased values. In the internal revenue laws, *ad valorem* taxes are taxes upon full values, and in every case where the tax is only upon the increased value, it is expressly so enacted.

It will not be contended that the machines were not manufactures wholly or in part of iron, within the meaning of the words in the paragraph before cited, on which a duty of five per cent. ad valorem is imposed. Castings of iron of ten pounds weight or less, the plaintiff in error contends are also taxable as a manufacture of iron at five per cent. *ad valorem*, under the same paragraph. Castings of iron of ten pounds weight or less are not expressly exempted from taxation, and they are made of iron advanced beyond pig-iron, blooms, slabs, or loops. (See 13 Stat. p. 268.)

The 94th section of the act referred to does not enumerate all the articles of taxation, but, in addition to a partial enumeration, uses words of general description. In iron, the smaller or costlier manufactures, as a rule, pay the higher rates of taxes. For example, plate iron not less than one-eighth of an inch in thickness is subject to a tax of three dollars per ton; plate iron less than one-eighth of an inch in thickness is subject to a

tax of five dollars per ton; steel ingots, &c., not less than one-fourth of an inch in thickness, valued at seven cents per pound or less, are subject to a tax of five dollars per ton: valued at above seven cents per pound, and not above eleven cents per pound, to a tax of ten dollars per ton, &c. The lighter manufactures of iron are per pound more costly and more valuable than the heavier; and the limitation in the express provision of the statute on castings, &c., not otherwise provided for, to castings exceeding ten pounds in weight to each casting, was enacted, not that castings of less weight should be exempt from taxation, but that they should, when not otherwise provided for, be included in the general clause taxing all manufactures wholly or in part of iron at five per cent. ad valorem, which tax, in practice, would be found to be much higher than a tax of three dollars per ton. It will hardly be pretended that these castings are not manufactures of iron.

The court must have ruled, as a matter of law, that if the tax was imposed on the full value of the machines, no tax could lawfully be imposed on either the castings exceeding ten pounds in weight, or those of ten pounds in weight or less, and if in either respect the court erred, the judgment must be reversed.

E. R. HOAR,
Attorney General.
W. A. FIELD,
Assist. Attorney General.

SUPREME COURT OF THE UNITED STATES.

DAVID M. OSBORNE, AND JOHN H. OSBORNE, SURVIVORS OF THEMSELVES AND CYRUS C. DENNIS, DECEASED,

Defendants in Error,

ads.

JOSEPH GATES, ASSESSOR, &c.,

Plaintiff in Error.

BRIEF FOR DEFENDANTS IN ERROR.

D. WRIGHT, Att'y and of Counsel for Def'ts in Error.

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SUPREME COURT, U. S.

DAVID M. OSBORNE & JOHN H. OSBORNE, survivors of themselves, and Cyrus C. Dennis, Defendants in Error,
ads.
JOSEPH GATES, Plaintiff in Error.

Brief for Defendants in Error.

THE CASE.

The plaintiffs, at the city of Auburn, N. Y., manufacture and sell "The Kirby Harvester and Mower."

They make the castings for the machines which they sell. But they make no castings to sell to others. They make their machines in accordance with the specifications attached to the different patents granted Kirby & Osborne from time to time, and are the *exclusive* manufacturers of those machines, and make no others.

The castings made by them are not applicable, and cannot be used for any other purpose, than as parts of this particular machine, and hence are not known as articles of trade in any sense. Fol. 8.

In the month of March, 1865, they returned as having been made by them in the month of February, 679 tons of castings "exceeding ten pounds in weight for each casting."

Upon these castings they were assessed at the rate of $3 per ton.

At the same time they returned, as having been produced by them in the same month of February, 264,378 lbs. of small castings of ten pounds in weight, or less, for each casting—of the value of $9,254 20.

At the same time they returned as having been sold by them in the same month of February, finished machines of the value of $3,725 80.

The castings, before they could be used by the plaintiffs, were required to be:

All of them polished.

Most of them painted.

Some of them varnished, and

All of them more completely finished and fitted for use.

The assessor of internal revenue in March, 1865, under the definite instruction of the commissioner of internal revenue (fol. 11), assessed a tax upon these articles, as follows:

Upon the castings of iron exceeding ten pounds in weight for each casting, at the rate of $3 per ton, to wit: on 679 tons, $2,037.

Upon the small castings of ten pounds or less for each casting, at the rate of five per cent. ad valorem, to wit: on $9,254 80 at 5 per cent., $462 71.

Upon the finished reapers and mowers sold, 5 per cent. ad valorem, *and including therein* the value of all the castings which formed parts of these machines, *and without making any allowance for the taxes already assessed*

and paid upon those same castings, to wit: on $3,725 80, at 5 per cent., $186 29, p. 6 and 7.

The plaintiffs protested and claimed that there was no warrant in the Act of Congress for the imposition of *all* these taxes. Fol. 11.

That they should not be taxed upon the same article twice.

First. Upon the *production* of each article or separate part of the machine, before it is used, or fitted for use, and

Second. Upon the same article, by including *the entire value thereof* in the machine as valued for taxation upon the manufactured article or finished machine.

The subject naturally resolves itself into three distinct propositions, to wit:

First. Was the tax properly assessed upon the 679 tons of "castings of iron exceeding ten pounds in weight for each casting," at $3 per ton.

Second. Was the tax properly assessed upon the small castings of ten pounds or less in weight each, at the rate of 5 per cent. *ad valorem*? And

Third. Was the finished, or *manufactured* machine properly taxed at 5 per cent. upon its full value, when finished, *without deducting the taxes levied upon the castings which formed parts thereof?*

THE ARGUMENTS.

First. In regard to the tax assessed upon the "castings of iron exceeding ten pounds in weight for each casting," we admit the assessor was right, *unless* they *were otherwise provided for.*

Not as a tax upon a *manufactured* article, but as a tax upon an article *produced* by the plaintiffs for themselves, to be used by them for the production or manufacttre of another article.

This tax was supposed by the assessor to be authorized by sec. 94 (p. 57 of the pamphlet), which provides "That upon the articles * * * *except where otherwise provided*, which shall be produced and sold, or be consumed or used by the manufacturer or producer thereof * * * * there shall be levied, collected, and paid the following dutie to be paid by the producer or manufacturer thereof, that is to say * * * (p. 62), on pig iron a duty of a two dollars per ton; on stoves and hollow ware and *castings of iron* exceeding ten pounds in weight for each casting *not otherwise provided for*, a duty of three dollars per ton."

1*st.* Now it is well known that *all* "castings of iron" are made of pig iron; and in this case, as the pig-iron from which the castings were made was subject to, and had actually paid $2 per ton before it came to the hands of the plaintiffs; it is quite apparent that if *they* pay $3 per ton additional duty upon the castings, the *article produced*, which is still but *pig iron* in fact, will pay a duty of $5 per ton, which we submit is all that Congress ever intended so long as it remains in the condition of *cast* or *pig-iron.*

2*d.* But we insist that *these* "castings of iron exceeding ten pounds in weight for each casting," are otherwise provided for, and that therefore they should not be assessed $3 per ton, under the above quoted provision.

To authorize the levying of this tax, it must appear, not only that they *are* included in that clause of the act authorizing the levy of this specific duty, but also that they *are not* included in any other clause authorizing another or different duty. For such is the expressed language of the act of Congress.

And it should be borne in mind that this is a *specific* and not an *ad valorem* duty. The first clause of Sec 94 (under which this tax was levied (p. 57) provides, "That upon the articles, etc., hereinafter mentioned, *except where otherwise provided*, there shall be levied, etc., the following duties:

"On stoves and hollow ware, and *castings of iron* exceeding ten pounds in weight for each casting *not otherwise provided for*, a duty of $3 per ton."

Of course, if *these* castings *are* otherwise provided for, then they are *not* subject to *this specific* duty.

And we submit that *all* the castings which are made and used by the plaintiffs, *are* otherwise provided for, and that the assessor knew that fact, acted upon it, *and actually assessed these same castings again under the other provision.*

It should be remembered that not one of these castings are sold by these plaintiffs except as a component part of their finished machine. None of them are articles of commerce, nor known in *the trade*. They are *all* made for, and used as parts of, one complete machine, as parts of a *single manufactured* article; and not otherwise (Fol. 8.) and as such they are taxable, and as such they *are all* taxed by the same Assessor, and the tax is paid by these same plaintiffs and under another clause of the *same section* 94; to wit, under that clause of the section (p.65) which provides that on all *manufactures* of cotton, wool, silk, worsted, hemp, jute, india-rubber, gutta-percha, wood, willow, glass, pottery-ware, leather, paper, *iron*, steel, lead, tin, copper, zinc, brass, gold, silver, horn, ivory, bone, bristles, *wholly or in part*, or of other materials *not in this act otherwise provided for*, a duty of five per cent. ad valorem." (p. 65.)

It was under this clause that the Assessor assessed the finished machines of the plaintiffs; and in which assessment he embraced *all these castings and at their full value* when finished and fitted for use. Thus showing not only that he *supposed* they were provided for under *this* clause, but that he *acted* upon that supposition. Wherefore we submit they could not be embraced in the other clause which authorizes the *specific* duty of $3 per ton, as that applies *only* to those things which are *not* otherwise provided for.

And hence the assessor was most clearly wrong in taxing them under *both* clauses of *the same section.*

We are not particular as to which tax we pay, but we protest against being compelled to pay both.

If we are taxed upon these castings as articles *produced*, to be used by us, then they are improperly included as parts of our finished machine, except in so far as they are advanced in value by being finished or fitted for use, of which more hereafter.

If they are to be considered as component parts of our machines, when finished, and taxable as such, under the five per cent. clause above quoted, then they *are* provided for under *that* clause and cannot be taxed under the other.

Second. In regard to the assessment of five per cent. ad valorem, upon the small castings of ten pounds or less in weight each, we submit that there was no authority or even excuse therefor.

It is supposed that the assessor levied this tax under the idea that it was authorized by that clause of Sec. 94, (p. 65), which provides that "on all *manufactures* of cotton, wool, silk, worsted, flax, hemp, jute, india-rubber, gutta-percha, wood, willow, glass, pottery-ware, leather, paper,

iron, steel, lead, tin, copper, zinc, brass, gold, silver, horn, ivory, bone, bristles, *wholly or in part*, or of other materials, *not in this act otherwise provided for*, a duty of five per centum, ad valorem." We submit:

I. These small castings are not "*manufactures of iron*," in the sense used in this clause of Sec. 94, nor in any sense. That term as used in the Act of Congress *invariably* means "finished and fitted for ultimate use," or for sale as a marketable product—and so thought the Commissioner in Dec. (24th,) 1862, when he wrote the letter which was published in the *Chicago Tribune* of Jan. 5, 1863, in regard to taxing cast-iron car wheels. For in that he says:—"In regard to manufactures generally I have to say, this office has held substantially that articles, manufactured and known to dealers in such or similar articles, as articles of traffic, and having, *as such*, a commercial value, independent of, and greater than the value of the materials used, are to be treated as manufactures, and subject to taxation under the excise laws."

"It is not sufficient, however, that an article should be valuable to a particular individual. It must be known to, dealt in, and be valuable to many persons, or to a class of dealers or consumers, in order that it may be considered an article of commerce. For example: If an inventor produces a machine different in its parts from any machine previously or elsewhere known or used; and in the construction of such machine prepares patterns or parts thereof, and procures castings therefrom, such castings could not be taxable as manufactures—for it cannot be said that they are known to trade, or that any number or class of persons are accustomed to buy or sell such castings; and consequently they cannot have a commercial value, inasmuch as no one but the inventor has a rgiht to make or use the article in question."

"The same reasoning would apply, and the same rule exist, in regard to an article, the use of which by the custom of trade was restricted to one person or a small number of persons, and which, consequently, was not the subject of unrestricted purchase and sale."

"This might be true of parts of sewing machines, for instance, such as are peculiar in their character and used for the manufacture of a peculiar kind of machine, etc."

It is submitted that this reasoning of the officer was sound, and I think it will not be denied but that it applies to all of these castings; for it is conceded they were applicable to the plaintiff's machine only. Fol. 8.

Any one examining the Act of Congress with care, will readily perceive that a marked distinction is kept up throughout the Act, between articles *produced*, and articles *manufactured*.

Thus in Sec. 83 we have "upon the amounts, quantities, and values, of *produce*, goods, wares, merchandise, and articles *produced* or *manufactured*," etc.

And in Sec. 84 we have, "That for neglect or refusal to pay the duties provided by law on *manufactured* articles, or articles *produced*," etc.

And again in Sec. 85 we have, "That in case of the *manufacture* and sale, or *production* and sale," etc.

And in Sec. 86 we have, "That any person, firm, company, or corporation, *manufacturing*, or *producing* goods," etc.

In Sec. 87, which relates to tobacco, etc., the word *producing* is dropped, and the duty is upon the *manufacture* alone."

So also in regard to Sec's 88, 89, 90, 91, and 92, all of which relate to tobacco in its various forms.

In Sec. 93 the terms used are, "goods, wares, and merchandise, or articles *manufactured* or *made*," etc.

Then comes Sec. 94, under which this tax was levied, which commences as follows (p 57):

"That upon the articles, goods, wares, and merchandise, *herein mentioned, except where otherwise provided*, which shall be *produced and sold*, or be *manufactured*, or *made and sold*; or be consumed or used by the *manufacturer* or *producer* thereof, etc., there shall be levied, collected and paid, the following duties," etc.

Thus it will be seen that a marked distinction is kept up between the terms *manufactured* and *produce* in all these sections. But when we come to the clause of Sec. 94, under which this tax upon these small castings was levied, the other term, *produced* is dropped, and the language used is, "on all *manufacturers* of . . iron . . not in this act otherwise provided for," (p. 65) etc. This was not an accident. It was a necessity. The terms are intrinsically different, and the one will embrace many things which cannot be included in the other.

No one having a proper regard for the use of terms would say that alcohol was *manufactured* out of corn; but would say is was *produced* by distillation. Or that castings were *manufactured* from pig iron. They are *made* from pig iron. They are the *same material* after, as before they were cast. They are still but pig iron run in a different mould. They are not *manufactures*.

An axe-helve is not *manufactured*, it is *made*. And so of all these *things made* from simple substances—which still retain the same consistency and are merely altered in form.

II. Again, not one of these small castings were perfect, or fit for use, when they came from the foundry, and it was while they remained thus in their rough and crude state that they were taxed.

Every one of them required to be polished, many of them required to be painted, and all to be *fitted for use* in its appropriate place before it could form any part of the *manufactured* article. See facts agreed upon, Fol. 9.

And hence when these castings were taxed, they had no element of a *manufactured* article about them.

III. These small castings being but parts of one single machine, or *manufactured* article, and not being *mentioned* in the section, are not taxable *separately* from the machine of which they form *constituent parts*.

Of course before they can be taxed under Sec. 94 it must appear that they come within the provisions of that section.

That section commences as follows (p. 57): "That upon the articles, goods, wares and merchandise *hereinafter mentioned*, except where otherwise provided, which shall be *produced and sold*, or be *manufactured* or *made and sold*, or be consumed or used by the manufacturer or producer thereof, or removed for consumption, or for delivery to others than agents of the manufacturers or producers within the United States or territories thereof, there shall be levied, collected, and paid, the following duties," &c. Then follows a very long list of articles *specifically* mentioned or named, and specifically taxed. *But these small castings* of *ten pounds* in *weight or less are not amongst them.* Then follows the *general* provision, under which the assessor assessed these small castings precisely as if they had been *specifically* mentioned.

That general provision in so far as the same affects this question is as follows, to wit: (p. 65.)

"On all *manufactures* of iron, wood, wholly or in part, or of other materials, not in this act otherwise provided for, a duty of five per cent., ad valorem."

And under this general clause the assessor assessed these small castings:—

1st. Specifically, as being *manufactures* of iron.

2d. Also generally as constituting parts of the finished or manufactured machine. Thus in effect, taxing them ten per cent. under this five per cent. clause.

Now we submit that this was an absurdity and inexcusable.

Why select out these small castings and tax them *specifically?* They are not amongst the articles "hereinafter *named*" in the section.

If these parts are to be assessed *specifically*, why not every other part of the same machine?

Why tax the cast iron part on the pole or tongue, and omit the wooden part? The pole itself of wood, is certainly as complete, and quite as much a *manufactured article* as is the piece of cast iron upon the end of it!

Why not tax the wooden part of the whippletrees as well as the cast iron loops and hooks upon the end of them? They are certainly quite as much a *manufacture* as is the hook and eye!

Why tax the iron upon the neck yoke *specifically*, and not the wooden part of the same? one is just as much a manufacture as the other.

This practice if carried to its legitimate result would be surprising, were it not so ridiculous!

Take a reaper for instance. It consists of a great many parts; each of which must be complete in itself before it can form a part of a finished reaper.

1*st.* There is the driving wheel of cast iron. That is first cast. It is then a casting of iron over ten pounds in weight, and of course must under this theory, be taxed by the ton, $3 per ton.

It is then *bored* smooth so as to receive the axle and is painted, if any excrescences have been left from the sand they of course must be smoothed—and when this is all done; to wit: When the casting shall have been smoothed off, painted, the hole for the axle bored and made perfectly smooth, then it is fitted for use, if it were a *manufactured article* when it came from the mould it is certainly a *finished* article now, and hence should be taxed again, under the general clause, 5 per cent., ad valorem.

Next it is put into a reaper as part of a finished machine and *the whole* is then taxed again as a *manufactured* article, 5 per cent., ad valorem, and so on in regard to each part of which the machine is composed.

The same rule would not be much less absurd if applied to other *manufactured* articles. For if it applies to articles made of *iron*, so also, it must to articles made of *wood*, or part of wood and part of iron—or in fact of whatever substance made.

Take a common rake for instance. That must be made in separate parts:

1*st.* The head. That is certainly as much a *manufactured* article as the hook and eye upon the ends of the whippletree to the reaper, and of course if the one should be taxed *before* it is applied to its intended use, the other should also, and tax it at 5 per cent., ad valorem.

2*nd.* The teeth. They are equally *manufactured* articles, and must be taxed separately at 5 per cent ad-valorem.

3*d.* The tail or handle—a thing complete in itself *for the use intended*, and hence a *manufactured* article. Tax that five per cent., ad valorem.

4th. Then put them together, and the rake appears, a *manufactured* article. Tax that as a whole and at its full value, five per cent., and we have a tax of ten per cent under the clause in this section which allows but five.

And so also of the axe. Tax first the steel edge, then the iron head, then the handle and then the whole instrument.

And so of the plow, and in fine of every conceivable instrument or implement which is composed of more than one piece.

But, perhaps, no better article could be selected to show the absurdity of this system, than the automatic rake which accompanies, and is taxed as a constituent part of a finished harvester.

Portions of that implement, (the running gear), is made of cast iron. The rake proper is of course made of wood. The assessor, in this case, levied a tax upon the cast iron parts separately, but not upon the wooden parts, although in point of fact the cast iron parts were utterly valueless, except as old cast or pig iron, except when used on this *identical* machine, whereas the rake might readily be accomodated to and used on any other harvester. The cast iron parts were again assessed as parts of the finished harvester also, and thus the cast iron part was in fact assessed twice, the wood part but once, and yet the Act of Congress under which the assessment was made, makes no distinction, but includes manufactures *of wood*, as well as those of iron. In fact the whole assessment was made under the same section.

V. These small castings *are* otherwise provided for. They are all embraced in the machine when completed; and are *then all* subject to a tax of five per cent, ad valorem, *the whole* machine being assessed at its full value, and therefore they are not taxable *separately* under this general clause of Sec. 94: for that only authorizes the tax upon "*manufactures of iron*" "*not in this act otherwise provided for*," which clause was inserted specially to prevent this double taxation, and if fairly and reasonably construed it will effectuate that intention.

Third. In regard to the tax levied upon the *finished machines* when sold, we say:

I. We admit the tax was properly levied under the clause of Sec. 94 above quoted (p. 65) which provides, That

"On all manufactures of cotton, wool, silk, worsted, flax, hemp, jute, india, rubber, gutta-percha, wood, willow, glass, pottery-ware, leather, paper-iron, steel, lead, tin, copper, zinc, brass, silver, horn, ivory, bone, bristles, wholly or in part, or of other materials, not in this act otherwise provided for, a duty of five per centum, ad valorem"

Under this clause the completed reaper or mower was doubtless taxable as a "*manufacture*," composed of various material. For it is composed of cast-iron, wood, wrought iron, malleable iron, steel, lead, zinc, and some other materials, and is a "*manufacture*" or *completed article*, it was not otherwise provided for, and as a *completed article* it was therefore properly taxable under this clause of Sec. 94.

II. But if the Assessor was right in taxing the cast iron parts separately, then clearly he was also bound to tax the other component parts separately, inasmuch as any other separate part was just as much as complete a "*manufacture*" when prepared for use, as a part of the whole machine, within that clause of Sec. 94 under which the cast iron parts were taxed as were those cast iron parts, and they should have been, *every one of them*, taxed separately, and in that case the machine would not have been taxable as a whole, because then as all the parts would have been

otherwise provided for, and as *all* the parts are not only equal to, but are in fact *the* whole, the whole were otherwise provided for in the act.

No ingenuity can show any reason why *every* part of this machine should not be taxed equally with the cast iron parts. For every part is complete *as a part* before it can be united to form the whole machine.

III. But most clearly, if the assessor was right in taxing any of the separate parts ot this machine, then the value of the parts thus taxed should not have been included in estimating the value of the whole machine; but their *increased value* only should have been included.

Sec. 95, (p. 68) provides "That whenever *any manufactured articles*, goods, wares or merchandise *on which an excise or impost duty* has been paid, and which is not *especially* provided for, are increased in value by being polished, varnished, waxed, oiled, gilded, electro-typed, galvanized, plated, framed, ground, pressed, colored, dyed, trimmed, ornamented, or *otherwise more completely finished or fitted for use without changing the original character or purposes for which the same are intended to be used*, there shall be levied, collected, and paid a tax of five per cent., ad valorem, *upon the amount of such increased value*, to be asertained by deducting from the value of the *finished article when sold*, or removed for sale, delivery, or consumption, *the cost or value of the original article* to the person, firm or company liable to the duty imposed upon the increased value thereof. *The increasing values in the manner aforesaid shall be deemed manufacturing.*"

Now we submit:

1*st*. If the assessor was right in taxing the cast iron parts of our machines as being "manufactures" under that clause of Sec. 94 under which he assessed them, then they were "*manufactured articles*" under this Sec. 95.

2*d*. That they were not *specially* provided for, but on the contrary were assessed under the *general* clause applicable to *all* cast iron, no matter of what form, or for what use made. That is to say, all those pieces exceeding ten pounds in weight for each casting, were taxed under the *general* clause applicable to *all* castings exceeding that weight each, except certain *specified* things mentioned in Sec. 94.

And those of ten pounds in weight or under, were taxed under the *general* clause of Sec. 94, and which is applicable to *all* "*manufactures*," no matter of what material composed.

3*d*. These castings were *all* increased in value, *all* were *polished* before nsing; many, if not all, were *painted*; many were made *malleable*; *all* were more completely finished and fitted for use.

4*th*. The original character, and the purpose for which they were intended, in regard *to all*, remained unchanged. (Fol. 9.)

And therefore we confidently insist, that *if* they are liable to be taxed separately, the machine when completed should be taxed, *as regards these parts, only* upon the increased value thereof, as provided in this Sec. 95.

The latter part of Sec. 96 (p. 69.) throws some light npon this question, as that provides that "all goods, wares, and merchandise *and articles made or manufactured from materials which have been subject to and upon which internal duties have been actually paid*, or MATERIALS imported, upon which duties have been paid, or upon which no duties have been imposed by law, where the increased value of such goods, wares, or merchandise, and articles so made or manufactured, shall not exceed the amount of five per cent., *ad valorem*, shall be and hereby are exempt from duty."

Now we apprehend that no one will contend that this clause is not ap-

plicable to the case, and if it is, it would be very strange if the other part of the same section was not.

And we submit further, that if these castings are to be taxed separately, our construction is the only one which will avoid a DOUBLE taxation upon this machine, as I think I have shown that if the cast iron parts are taxable separately *all* the other parts are also so taxable.

5th. If the defendant's construction of the Act of Congress be the true one, then as the law then stood, these machines were in fact required to pay a tax of eighteen per cent. *ad valorem.* Hence, it would be cheaper to manufacture them in Canada and import them complete and ready for use, for no one would contend that more than *one* import duty would then be charged upon them.

If imported, the duty would be 20 per cent. on the value *whence brought.*

If made in Auburn, under the construction of the Act of Congress, as construed by the collector:

On pig iron, $2.40 per ton, fully equal to..... 6 p. c.
On cast iron..... 6 p. c.
On the finished machine.....6 p. c.

Or in the aggregate.....18 p. c.

on the value here. Add to this the income tax of the manufacture and the home duties will exceed the import duties!!!

But we think the court will not sanction any such construction, which will subject these indispensable agricultural implements to this double tax, or to compel the farmer to look to a foreign country for his supply, unless the language of the Act of Congress *imperatively* demands it.

No one will pretend or even suggest that Congress intended to impose an undue share of the burthens of taxation upon machines which did as much as any other to preserve the food for the nation during its great struggle.

Nor is it reasonable to suppose that Congress intended to provide that "iron castings used for bridges or other permanent structures" by the railroad companies or others, should pay a duty of $3 per ton only, but that "iron castings" when used as parts of a reaper or mowing machine, or of a plow, should be taxed an additional 5 per cent., *ad valorem.*

Nor will any sane man suppose that Congress intended to drive the farmers of this country to rely upon foreign countries for a supply of reapers and mowers, by taxing the manufacturers at home a greater duty thereon than the importer of a like article. Nor do we believe that the court will so decide.

Fourth. Is the Assessor liable?

It may be contended that the assessor acts judicially and therefore he should not be held personally responsible for a mistake in judgment; and upon that argument the decision of the Courts of New York will be cited. It is admitted that the highest court of that State has decided, that where the assessors elected under the statutes of that state,e rr in judgment, in a case where they have acquired jurisdictions of the person and of the property assessed, he is not liable for error of judgment.

Barhytes & Shephard, 35 N. Y. R. 238.

But the assessors of New York, are officers differing very widely from the assessors under the internal revenue law. The assessors in New York have power to examine witnesses, to hear and determine questions sub-

mitted to them, and from their decision there is no appeal. See the reasons of the chief justice in the case above cited.

But the assessors of internal revenue have no such authority. They act, not decide, as they are instructed by the commissioner in fact in this case, the assessor was of a different opinion as was evidenced by the fact that he never assessed these castings separately previously to March 1865. (Fol. 9) and they were thus assessed in that month, under the definite instructions from the commissioners of internal revenue. (Fol. 11). That a person acting under the *definite instructions* of a superior should be said to act *judicially* would be a legal absurdity.

Again, the assessors in New York are not indemnified in case of a recovery against them, as are these assessors by the 44th Sec. of the Act of 1864 (p. 22.) This whole matter is very lucidly argued by Justice Clifford in giving the opinion of the court, in the case of City of Philadelphia vs. the Collector.

5 Wallace 27.

D. WRIGHT,
Of Counsel for Plaintiffs.